

## Memorandum 79-59

Subject: Study D-320 - Enforcement of Claims and Judgments Against  
Public Entities

The Commission approved for distribution for comment a tentative recommendation relating to enforcement of claims and judgments against public entities. The comments we received are attached as exhibits to this memorandum.

A number of the comments concern technical matters that require revisions in the tentative recommendation. Accordingly, we have revised the tentative recommendation to make the necessary technical corrections, and a revised draft of the recommendation is attached. We recommend that the recommendation be approved for printing in the attached form. If the Commission determines that any revisions should be made in the attached recommendation, we will make them before we send the recommendation to the printer.

The following is a discussion of the various comments we received on the tentative recommendation.

University of California

The tentative recommendation did not deal with the payment of claims and judgments by the Regents of the University of California. It appears that the existing provisions do not apply to the University of California, and the staff indicated that it wanted to check out with the office of the General Counsel of the University whether the provisions should apply to the University.

The office of the General Counsel advises that the existing provisions do not apply to the University and believes that they should not be made applicable. See Exhibit 1 attached. The staff believes that this is a sound conclusion. At the same time, we do not want to make the provisions that preclude a levy on state property applicable to the University absent some provisions requiring payment by the University. Accordingly, we have added a provision to the attached recommendation that specifically excludes the Regents of the University of California from the application of the provisions relating to payment of claims, settlements, and judgments. See Section 965.9 on page 18 of the enclosed draft.

### Department of Transportation

The Department of Transportation approved the tentative recommendation as proposed. See Exhibit 2 attached. However, the Department of Finance pointed out that recently enacted legislation makes it no longer necessary to retain various provisions that exclude the Department of Transportation from the applicability of various provisions. See Exhibit 9 attached. This is because formerly the Department of Transportation had continually appropriated funds but now the Department of Transportation no longer has continually appropriated funds but operates on an annual legislative appropriation the same as other state agencies.

The staff believes that the point made by the Department of Finance is sound and that the various exclusions can and should be deleted. We have deleted these exclusions in the revised recommendation attached.

### Writ of Mandate to Enforce Payment by State

The Department of Finance is concerned about Section 965.8 on pages 17-18 of the attached draft (Section 965.9 of the tentative recommendation). The department suggests that the writ of mandate should be used only to require the Director of Finance to certify whether or not an appropriation exists. The writ would not be available to review the director's decision. Hence, the writ would not be available to review a certification that no appropriation exists even though one in fact does exist. The purpose of this provision is to permit the persons seeking payment to obtain a court determination whether an appropriation in fact does exist for the payment. For example, if the Legislature makes an appropriation for payment of a claim or judgment but the Executive Branch refuses to pay the claim covered by the appropriation, the claimant should be able to compel payment by writ of mandate. In this connection, see the court opinion included in Exhibit 8 attached where the court construed a statutory provision to require payment and ordered designated state officials to make payment. The staff has discussed this with the nonlawyer representative of the Department of Finance who raised the question and we believe that the department will not oppose this provision of the proposed legislation. Accordingly, we recommend no change in the provision.

## Refusal of State to Pay Judgment

The existing statutory scheme is that the state can refuse to pay a judgment and, absent an appropriation by the Legislature, the courts will not compel payment. The courts will not mandate the Legislature make an appropriation. The proposed legislation does not disturb the existing scheme. Several commentators objected to the existing scheme. Exhibit 8 attached states that the recommendation "is flawed by its failure to deal with problems arising when the legislative and executive branches of government are reluctant to pay a judgment." The letter notes that the courts have awarded attorneys' fees in several class action suits but the attorneys have been unable to collect because the Legislature has failed to pass a line item appropriation to pay the fees. The matter is now in litigation and turns on a construction of Code of Civil Procedure Section 1028, which provides that "costs" awarded against a state agency shall be paid out of its support budget. The commentator suggests that the right to levy on state property should be continued for two reasons:

(1) Although the cases state that levy on state property is not permitted, the courts may change this rule.

(2) As a matter of policy, levy should be permitted if the state refuses to pay the judgment.

The staff recommends that no change be made in the recommended legislation.

Exhibit 13 attached recognizes that the recommendation continues the existing difference regarding the obligation to pay between state and local agencies. The suggestion made is that the law should be consistent for both the state and local agencies. Local agencies are required to pay judgments, but--as pointed out above--the state is not. The writer suggests that a statutory scheme be adopted to apply both to the state and local public entities that would require the entity to make an appropriation with the right to execute on public property if there is a willful failure to make an appropriation. The writer does not like the existing provisions that apply to local public entities; these provisions require appropriations to pay judgments and a writ of mandate can be used to compel payment. Here again, the staff recommends no change in the existing provisions. These provisions reflect a choice made by the Legislature that would, be believe, not be possible to change.

### Installment Payments by Local Public Entities

The proposed legislation retains the substance of the existing provisions permitting installment payments by local public entities.

Exhibit 11 attached suggests adding an additional sentence to amended Government Code Section 912.6(c). We have adopted this suggestion and have added the last sentence to Section 912.6(c) on page 11 of the revised recommendation.

Exhibit 3 attached suggests that the discretion as to whether installment payments are to be made should be given to the local public entity rather than to the court. The proposed law continues the existing requirement that the court authorize installment payments in hardship cases in order to protect the judgment creditor from abuse of the privilege by the local public entity. Legislation to give the local public entity itself discretion to make installment payments in the case of tort judgments failed to pass at the 1979 session, and we do not believe that this suggestion proposes a desirable change even if it had a chance of legislative approval. Exhibit 5 attached expresses concern that a court will permit installment payments on the grounds of "unreasonable hardship" in a case where the liability is insured in whole or in part or can be passed on to the United States under a grant, contract, or other arrangement. We do not believe that any change should be made in the statutory provision to deal with these situations, but we have added the last paragraph to the Comment to Section 970.6 (page 22 of the revised recommendation) to indicate that it would not be appropriate to permit installment payments in these situations.

### Effect of California Constitution Articles XIII A and XIII B

Several writers raise the question of the effect on payment of a settled claim or judgment of the limitations on property taxes and appropriations imposed by recently approved Articles XIII A and XIII B. See Exhibits 11, 12, and 13.

Article XIII A (Proposition 13) imposes limitations on the levy of property taxes. The article contains no exception to the limitation for costs "mandated by the courts." Accordingly, this article provides no authority to levy additional property taxes to pay approved claims and judgments. The approved claim or judgment must be paid from the funds available from property taxes and other sources. To make the payment, the local public entity has several choices: Other expenditures must be

reduced, the claim or judgment must be paid in 10 annual installments, or the voters must approve a bond issue to pay the judgment and pay the bonds off over a longer period.

Article XIII B, which limits the appropriations that may be made by a local public entity, does present a problem that the Commission may wish to address. Section 9 of the new Article provides in part:

"Appropriations subject to limitation" for each entity of government shall not include:

\* \* \* \* \*

(b) Appropriations required for purposes of complying with mandates of the courts or the federal government which, without discretion, require an expenditure for additional services or which unavoidably make the providing of existing services more costly.

The commentators suggest that some provision be made by statute concerning the application of this provision to claims, settlements, and judgments. One alternative would, of course, be to provide nothing in the statute as to the application of this provision of the Constitution, leaving the matter to litigation to determine how the provision applies to claims, settlements, or judgments.

It might be desirable, however, to give a statutory interpretation of the provision of the Constitution and thereby attempt to extend it beyond a judgment resulting from a nondiscretionary act. Section 971 of the proposed legislation defines "judgment resulting from a nondiscretionary act". The suggestion with the most merit is made by the City of Los Angeles in Exhibit 12 attached:

True, Section 9(b) of Article XIII B exempts "mandates of the courts" from the definition of "appropriations subject to limitation," but this would not include claims allowed and payable outside of litigation. If it would be possible to define settlements in lieu of litigation as being treated as a "mandate of the court" for the purposes of Article XIII B, it would encourage such settlements. A conscientious public attorney may feel compelled to avoid settlements prior to judgment in order to preserve or enlarge his client's options in selecting a method of settlement.

It is apparent that the language of the constitutional provision could have been drawn more broadly to include settlements in lieu of litigation. The question is whether the language can be construed this broadly. Absent a statutory statement that the language is to be given this broad construction, it is unlikely that a court would so construe

the language. Also as a policy matter, should all settlements be not included within this limitation on appropriations? Settlements have been included in the appropriations made in the past so they are included within the level of appropriations for the base year for the purposes of the constitutional provision. In the case of a large settlement, the parties can agree to a stipulated judgment so that the settlement probably will be one "mandated by the courts." The staff makes no recommendation concerning this matter, but we do believe it is a matter that merits serious consideration by the Commission.

#### Matters Not Dealt With in Tentative Recommendation

A number of matters were raised that were not dealt with in the tentative recommendation. These are discussed below.

Mandamus against public agency to compel the agency to take proper and timely steps to avoid the loss of any rights of reimbursement or an indemnity. Exhibit 5 suggests that the claimant be given the right of mandamus in this situation. The self interest of the public agency would appear to be sufficient to assure that it will protect its rights; otherwise, the agency itself will have to pay the judgment. We have concern about a claimant involving the public agency in litigation as to whether the agency is protecting its own rights. More important, we do not believe it should be dealt with in this recommendation.

Claims presentation requirement. Exhibit 6 urges the repeal of the requirement that a claim be presented to a public entity prior to suit. Assuming the repeal would be desirable, the Commission and others have sought in the past to mitigate the harsh claims filing requirement without success. Legislation to provide somewhat more relief from the claims filing requirement was enacted in 1979 but vetoed by the Governor. This is a controversial area and should not be dealt with in this recommendation.

Joint powers entity. Exhibit 12 points out the difficult problem a claimant may have collecting from a joint powers entity that relies solely on restricted federal grant funds. We do not see what type of legislation could be enacted to provide for payment in this situation. This is a situation similar to one where the judgment creditor obtains a judgment against a private party that does not have funds to pay the judgment. The existing statute does assure payment if the funding source for a joint powers agency is other local public entities.

Allowance of interest on claims. It is suggested in Exhibit 12 that a provision be added to the statute to provide a rule governing when interest commences to run on an approved claim. It would be possible to draft such a provision. If the Commission wishes to include one, the staff suggests something along the lines of the following:

Unless the public entity and the claimant otherwise agree in writing:

(a) Interest on a claim allowed in full or in part accrues at the rate provided for judgments until the claim is paid.

(b) Interest on a claim allowed in full commences to accrue 30 days after the claim is allowed.

(c) Interest on a claim allowed in part commences to accrue 30 days after the claimant accepts in writing the amount allowed in full settlement of the claim.

Liability of joint tortfeasors. Exhibit 13 points out that the rule of comparative fault, when applied in connection with the existing rule that one joint tortfeasor is liable for the entire judgment, has imposed a serious burden on state and local public entities. Reform of this rule is clearly beyond the scope of this recommendation.

Respectfully submitted,

John H. DeMouilly  
Executive Secretary



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Fred Takemiya

October 5, 1979

Mr. John H. DeMouilly  
Executive Secretary  
California Law Revision Commission  
Stanford Law School  
Stanford, CA 94305

Re: Recommendation Relating To Enforcement  
of Claims and Judgments Against Public  
Entities

Dear Mr. DeMouilly:

This is in reply to your letter of September 21, 1979 which solicited our suggestions as to the content of an appropriate provision governing when a judgment against The Regents of the University of California must be paid.

We appreciate the opportunity to comment on this aspect of the tentative recommendation.

We believe the recommendation is appropriate in its present form in not containing any suggested provision with respect to judgments entered against The Regents. There is substantial question as to the authority of the Legislature to determine the obligation of The Regents upon entry of a judgment against the University or the method or manner of discharging that obligation. Furthermore, we see no need for any statutory provision in this regard. The Regents have never failed to pay a judgment and the determination with respect to the fund sources to be utilized should remain a matter completely within the discretion of The Regents.



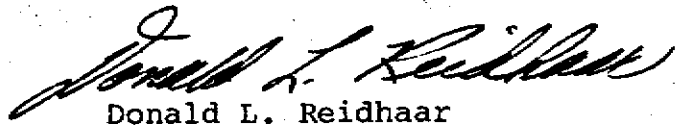
Mr. John H. DeMouilly  
October 5, 1979  
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In 1963, in its proposal to the Legislature, the Commission confirmed that the statutes with respect to claims, actions and judgments against public entities and public employees were not applicable to the University of California. (See Gov. Code sec. 905.6 and sec. 943.) Although Chapter 1 of Division 3.6 of Part 5 of Title 1 of the Government Code (sections 965-965.4) was not made expressly inapplicable to The Regents, there is no question as to the inapplicability of these sections to the University. Not only do sections 905.6 and 943 compel this conclusion, but also the State Board of Control exercises authority only for agencies within the executive department. This, coupled with the long standing administrative practice of the Governor pursuant to Government Code section 965.4 of not including in his report to the Legislature judgments against The Regents, indicates that these provisions were not intended to, and do not, apply to The Regents.

Accordingly, I do not believe that any good purpose would be served by proposing any statutory provision regarding judgments against The Regents.

As a general comment, the recommendation appears to us to be carefully and appropriately drafted.

Sincerely,

  
Donald L. Reidhaar

## DEPARTMENT OF TRANSPORTATION

LEGAL DIVISION

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P.O. BOX 1458, SACRAMENTO 95807

(916) 445-3328

EXHIBIT 2



October 9, 1979

Mr. John H. DeMouilly  
Executive Secretary  
California Law Revision Commission  
Stanford Law School  
Stanford, CA 94305


Dear Mr. DeMouilly:

In re: Tentative Recommendation Relating to Enforcement of  
Claims and Judgments Against Public Entities

Thank you for the opportunity to review and comment on the  
above entitled California Law Revision Commission recommendation.

The recommended legislation does not appear to have any adverse  
impact upon the operations of the Department of Transportation  
and we accordingly have no objection to the proposal. In fact,  
the clarification which will result should serve a necessary  
purpose in terms of enforcing claims and judgments against  
public entities.

Very truly yours,

  
GORDON S. BACA  
Attorney

## EXHIBIT 3

MARTIN J. BURKE  
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 DWIGHT A. NEWELL  
 JAMES T. BRADSHAW, JR.  
 MARK C. ALLEN, JR.  
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 COLIN LENNARD  
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 NEIL F. YEAGER  
 BRIAN A. PIERIK  
 WILLIAM PAUL KANNOV  
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LAW OFFICES  
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 LOS ANGELES, CALIFORNIA 90017

October 10, 1979

TELEPHONE  
 (213) 485-0101

HARRY C. WILLIAMS  
 (1912-1967)

GEORGE W. WAKEFIELD  
 OF COUNSEL

California Law Revision Commission  
 Stanford Law School  
 Stanford, California 94305

Re: Tentative Recommendation relating to  
 Enforcement of Claims and Judgment  
 Against Public Entities

Dear Chairperson Williams and  
 Members of the Commission:

I am in receipt of a Tentative Recommendation dated September 17, 1979 relating to Enforcement of Claims and Judgments against Public Entities. I have reviewed that report and submit the following comments:

1. I agree that it is desirable to expressly provide that execution is not available as a means of enforcing judgments against public entities. It would be difficult to estimate how much needless expense public agencies have been put to in order to quash writs of execution levied on their payroll account or other public property;

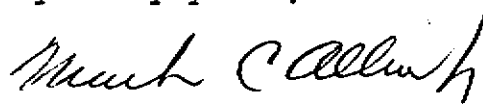
2. I have no objection to a provision that calls for equal annual installment payments instead of equal annual principal payments, however, I see no true merit in either provision. It would appear to me preferable to provide statutory authority for either such type of payment;

3. I strongly disagree with the Commission's election to leave discretion as to whether installment payments are to be made or whether matters are to be paid in full to the court who has before it only two parties; one whom it has already decided is entitled to some money, and the other does not want to pay it, except by installments. A much more important consideration is the total budgetary picture interrelated with as many other judgments as may exist and police salaries and pension benefits and the myriad of other obligations that public agencies face. Probably, in all cases, but certainly in every case where the governing body is elected directly by the people,

California Law Revision Commission  
October 10, 1979  
Page -Two-

it is inappropriate to delegate to the judiciary the determination of any more than what must be paid. Once the judiciary has decided that, I strongly urge that the local governing body be permitted to determine how the judgment should be paid within the statutory scope.

Very truly yours,

A handwritten signature in cursive script that reads "Mark C. Allen, Jr." The signature is written in dark ink and is positioned above the typed name.

MARK C. ALLEN, JR.

MCA/emc

## DEPARTMENT OF FORESTRY

1416 NINTH STREET - Room 1512  
SACRAMENTO, CALIFORNIA 95814

(916) 445-9378



L-4

October 11, 1979

California Law Revision Commission  
Stanford Law School  
Stanford CA 94305

## Commissioners:

Tentative recommendation relating to enforcement of claims and judgments against public entities dated September 17, 1979 has been reviewed by this Department. We find no objections to the proposal as it affects the Department of Forestry, a state agency, or as it affects city, county or fire districts with whom we contract.

Yours truly,

A handwritten signature in cursive script, appearing to read "David E. Pesonen".

DAVID E. PESONEN  
DirectorSC  
attachment

## EXHIBIT 5

## SCHWARTZ &amp; DREIFUS

ARNOLD M. SCHWARTZ  
JORDAN A. DREIFUS

ATTORNEYS AT LAW  
5670 WILSHIRE BOULEVARD  
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TEL: (213) 937-5311  
CABLE ADDRESS: SCHWARD

October 13, 1979

California Law Revision Commission  
Stanford Law School  
Stanford, California 94305

Re: Recommendation Relating To Enforcement Of  
Claims and Judgments Against Public  
Entities, September 17, 1979, D-320

Gentlemen:

I call your attention to the fact that your recommendation appears not to take into account the effect of two very significant outside sources of funds to pay claims and judgments.

In many instances, tort liability is insured, in whole or in part.

Also, with respect to contract liability, there has been a great increase in financial participation by means of grants, subsidies or other means, direct or indirect, by federal agencies in activities of local and state governments. You will find that it has suddenly become true that no substantial contracts are undertaken without such participation by the federal government. Thus, a federal agency will be a source of reimbursement and/or indemnity in whole or in part, of any claim or judgment arising out of such a contract liability. The larger the contract, the more likely substantial federal participation. In fact, the obligations in which federal participation would be unlikely or unimportant would be small contracts and small projects which would be very unlikely to generate any claim or judgment of such size as to be a "hardship".

Under the provisions in your recommendation, proposed Government Code §970.6, for example, is it an "unreasonable hardship" if a liability is insured in whole or in part, or in whole or in part can be passed on to the United States under a grant, contract, or other arrangement?

If the parties have contracted with a local or state agency on the assumption of availability of federal financing, not only to pay an agreed obligation but also to pay

California Law Revision Commission  
Page Two  
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contingent additional liabilities, does the proposed statute give the government entity and the United States an unintended benefit by permitting them to delay payment in installments?

What if by some act of "malpractice" on the part of the local or state agency there is a violation of a requirement of cooperation with, or authorization or prior approval of, the United States in order to obtain reimbursement or indemnification for some liability? (Cf. Louisiana Department of Highways vs. United States, Ct. Cl. July 18, 1979, \_\_\_ Fed.2d \_\_\_) Should the right to mandamus against the agency include power to compel the local or state agency to take proper and timely steps to avoid the loss of any rights of reimbursement/indemnity?

Very truly yours,



JORDAN A. DREIFUS

JAD:lmt

## LEGAL AID FOUNDATION OF LONG BEACH

LONG BEACH OFFICE

4790 E. PACIFIC COAST HIGHWAY • LONG BEACH, CALIFORNIA 90804 • 434-7421

October 15, 1979

California Law Revision Commission  
Stanford Law School  
Stanford, California 94305

Re: Tentative recommendation relating to  
enforcement of claims and judgments  
against public entities.

Dear Members of the Commission:

Thank you for the opportunity to comment on your tentative recommendation relating to enforcement of claims and judgments against public entities.

The problems you discuss and address in the tentative recommendation are ones that attorneys in this office, representing poor people, encounter from time to time. Your efforts to simplify and clarify the law in this area are both welcome and helpful.

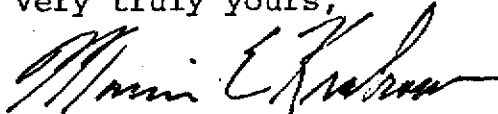
However, I would like to suggest that you address the problem of the requirement of a claim against a government entity prior to suit. The claim requirement unnecessarily shortens applicable statutes of limitations without filling any real government function. To the extent a separate claim is required, it should be permissible to file such a claim within the entire period of the otherwise applicable statute of limitation. The claim requirement, as it now stands, provides a trap for the unwary. All too frequently, that burden falls upon poor people, although they are not its exclusive victims. I hope that in preparing your final recommendation concerning claims against the government that you can address this problem as well as the others to which you have already spoken.



California Law Revision Commission  
October 15, 1979  
Page 2

These opinions are mine personally, and do not necessarily reflect the views of the Legal Aid Foundation of Long Beach.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Marvin E. Krakow".

Marvin E. Krakow  
Director of Litigation

MEK:dk



EXHIBIT 7  
 DEPARTMENT OF THE MARSHAL  
 MUNICIPAL COURT OF CALIFORNIA  
 County of San Diego  
 MICHAEL SGOBBA, MARSHAL

October 15, 1979

California Law Revision Commission  
 Stanford Law School  
 Stanford, CA. 94305

Gentlemen:

We have reviewed the tentative recommendations relating to:

1. The Probate Homestead Dated 09-14-79
2. Enforcement of Claims and Judgements  
Against Public Entities Dated 09-17-79
3. Agreements for Entry of Paternity and  
Support Judgements Dated 09-17-79
4. Enforcement of Obligations after Death Dated 10-02-79

The proposals appear to be appropriate reforms in their respective areas and we have no comment on them other than to indicate our approval.

Yours truly,

MICHAEL SGOBBA, Marshal

by

*R.A. Aguilar*  
 R.A. Aguilar, Lieutenant

## EXHIBIT 8

## WESTERN CENTER ON LAW AND POVERTY, INC.

3535 WEST 6th STREET  
LOS ANGELES, CALIFORNIA 90020  
TELEPHONE (213) 487-7211

October 22, 1979

JOHN E. McDERMOTT  
EXECUTIVE DIRECTOR

PHILIP H. HENDERSON  
ADMINISTRATOR

PATRICIA M. TENOSO  
ROBERT T. OLMOS  
SENIOR COUNSEL

California Law Revision Commission  
Stanford Law School  
Stanford, California 94305

Re: Tentative Recommendation Relating to Enforcement of  
Claims and Judgments Against Public Entities

Dear Commissioners:

As attorneys frequently involved in litigation against California state agencies, we are concerned with certain aspects of the above-entitled recommendation. Although the recommendation is well intended and carefully drafted, it is flawed by its failure to deal with problems arising when the legislative and executive branches of government are reluctant to pay a judgment. In fact, it actually makes it more difficult for a judgment creditor to collect on a judgment against a state agency by prohibiting execution on publicly-owned property.

The problem we raise is not hypothetical. In two cases, the Western Center was awarded attorneys' fees [Serrano v. Priest, 20 Cal. 3d 25 (1977); Kopcsso v. Riles, L.A. Super. Ct. No. CA 000 384], but has not collected because the Legislature has failed to pass a line item appropriation to pay the fees and the defendant agencies have refused to pay out of existing administrative expense appropriations. Attorneys representing the plaintiff in Mandel v. Hodges, 54 Cal. App. 3d 596 (1956) also have been unable to collect the fees awarded in that case.

The right to collect the fees awarded in these cases is presently being litigated. In the Mandel case, the Alameda County Superior Court has ordered the defendant state agency to pay the fees previously awarded to plaintiffs' counsel, out of the agency's operating expenses and equipment budget. Mandel v. Myers, No. 427 816 (a copy of which is attached), appeal pending in First District Court of Appeal. Among the issues raised in Mandel and the Western Center cases are whether a court may order fees to be paid pursuant to Code of Civil Procedure Section 1028, which provides that costs awarded against a state agency shall be paid out of its support budget; whether the constitutional prohibition of payment of money from the Treasury without an appropriation prevents payment of fees from an agency's operating expenses and equipment budget; whether the legislative and executive branches may constitutionally resist complying with a

October 22, 1979

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judgment arising from the State Constitution; and whether a judgment creditor may execute against state-owned property.

While the tentative recommendation would have only a minor effect on all but the last question, it would prohibit execution on all public property on the rationales that this is consistent with case law, execution is not an effective method of enforcing a judgment, and judgment creditors have alternative remedies. None of these rationales supports such a prohibition.

First, although early appellate opinions do prohibit execution on state property, those opinions were not based on any statute. As the comment to proposed Government Code Section 965.6 acknowledges, the only present statutory ban on execution relates to tort judgments. Tentative Recommendation at 16. And, as also pointed out in the recommendation, execution on the property of a state agency was allowed in Maurice L. Bein, Inc. v. Housing Authority, 157 Cal. App. 2d 670 (1958). We are arguing in court that the early case law prohibition of execution on state property was based on notions of common law sovereign immunity no longer applicable. See Muskopf v. Corning Hospital District, 55 Cal. 2d 211 (1961), eliminating common law sovereign immunity against tort claims. Thus, it is far from clear that execution on state property is already outlawed.

Second, while it may well be cumbersome to execute on state property, doing so is preferable to not collecting on a judgment at all. Depending on the outcome of the appeal in Mandel, execution may be the only method for collecting against the state which the courts recognize. It requires neither an order for the Legislature to do something nor an appropriation. As such, with all its faults, it may turn out to be the most feasible way to reconcile the interests of judgment creditors and the judiciary in seeing valid judgments enforced with the reluctance of state legislators and executive officials to comply with judgments with which they do not agree. As such, it should not be prohibited unless there is an adequate alternative collection mechanism.

Very truly yours,

*John E. McDermott*

John E. McDermott, Executive Director

*Richard A. Rothschild*

Richard A. Rothschild, Staff Attorney

JEM-RAR/jacj  
Enclosure

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445 Sutter Street  
4 San Francisco, CA 94108

5 ATTORNEYS FOR PLAINTIFF

ENDORSED  
FILED

JAN 10 1979

RENE C. DAVIDSON, County Clerk  
Harry Carsch, Deputy

EXHIBIT B

6  
7  
8 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 IN AND FOR THE CITY AND COUNTY OF ALAMEDA

10  
11 SHELLEY MANDEL,  
12 Plaintiff,

13 vs.

14 BEVERLEE MYERS, Director, Department of  
Health Services of the State of California;  
15 DEPARTMENT OF HEALTH SERVICES OF THE STATE  
OF CALIFORNIA; CALIFORNIA STATE PERSONNEL  
16 BOARD and NITA ASHCRAFT, IRENE TOVAR, ROBERT  
M. WALD, FRANK M. WOODS and WILLIAM R.  
17 GIANELLI, not individually, but as the members  
of the said BOARD; KENNETH CORY, Controller  
18 of the State of California; EDMUND G. BROWN, JR.,  
Governor of the State of California; STATE OF  
19 CALIFORNIA,

20 Defendants.

)  
) NO. 427 816  
) AMENDED ORDER  
) GRANTING MOTION  
TO TREAT  
) ATTORNEYS' FEES  
) AS COURT COSTS  
) AND DIRECTING  
PAYMENT OF  
) JUDGMENT

21  
22 This matter having come on for hearing on November 17, 1978, in  
23 Department 22 of this Court, Honorable Robert L. Bostick, Judge,  
24 Presiding, Plaintiff appearing by RICHARD M. KAPLAN and Defendants  
25 appearing by EVELLE J. YOUNGER, Attorney General through EDWARD  
26 P. HILL, Deputy Attorney General, and the court having considered the

1 papers on file in support of, and opposed to, the said motion,  
2 and the matter having been argued and submitted for decision, and  
3 good cause appearing, now therefore,

4 IT IS ORDERED, ADJUDGED AND DECREED as follows:

5 1. That the award of attorneys' fees to RICHARD M. KAPLAN  
6 and EPHRAIM MARGOLIN of \$25,000.00 in the Judgment of April 6,  
7 1973, in this cause, shall be, and it hereby is, deemed to be  
8 costs within the meaning of Code of Civil Procedure Section 1028;  
9 and,

10 2. Defendants BEVERLEE MYERS, Director of the Department of  
11 Health Services, and DEPARTMENT OF HEALTH SERVICES OF THE STATE  
12 OF CALIFORNIA, and KENNETH J. CORY, State Controller, and STATE  
13 OF CALIFORNIA, are ordered to pay to RICHARD M. KAPLAN and  
14 EPHRAIM MARGOLIN the said sum of \$25,000.00, plus interest from  
15 April 6, 1973, from the funds of the Department of Health Services  
16 pursuant to Item 244(b) of the 1978-79 Budget of the State of  
17 California.

18 IT IS FURTHER ORDERED that this Court shall retain jurisdiction  
19 over this cause for all purposes, including enforcement of this  
20 order.

21 Original order done in Open court December 6, 1978, and  
22 presented for signature and signed January 8, 1979, and amended  
23 order signed January 10, 1979, nunc pro tunc as of December 6,  
24 1978.

25 ROBERT L. BOSTICK

26 

---

Judge of the Superior Court

1 Approved as to form:

2

George Duckmejian  
Attorney General  
3 John J. Klee, Jr.  
Deputy Attorney General  
4 Edward P. Hill  
Deputy Attorney General  
5

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7 By Edward P. Hill

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## DEPARTMENT OF FINANCE

SACRAMENTO



November 1, 1979

Honorable Alister McAlister  
Member of the Assembly  
State Capitol, Room 3112

## COMMENTS ON CALIFORNIA LAW REVISION COMMISSION'S RECOMMENDATIONS

This letter is in response to your invitation to comment on the California Law Revision Commission's "Tentative Recommendations Relating to Enforcement of Claims and Judgments Against Public Entities." I understand that it is your intention to use these recommendations to propose changes to the existing laws relating to the payment of claims.

The proposed code revisions dealing with claims against the State appear, for the most part, to be technical clarifications of the code rather than substantive changes in law. However, we suggest that two of the proposed code changes be further clarified: those sections dealing with the availability of funds to pay claims arising from the activities of the Department of Transportation, and the proposed Section 965.9 dealing with the application of writs of mandate to the Director of Finance.

Language pertaining to the availability of funds to pay claims arising from the activities of the Department of Transportation should specify, as a condition for payment, that a sufficient appropriation for the purposes of the payment exists rather than simply that the Budget includes a sufficient amount budgeted for the payment. While the difference between the terms budget and appropriation may seem minor, the differences are often significant. The Legislature now appropriates funds for the support of the Department of Transportation, including amounts for the payment of claims. The determination as to whether funds are available to pay particular claims involves a review of whether the Legislature appropriated money for that purpose. The language as proposed could be construed as requiring payment from any appropriation regardless of the purpose or limitations on the use of that appropriation.

The addition of Section 965.9 to the Government Code, as proposed, would appear to require the Director of Finance to certify the availability of funds when, in the Director's judgment, funds were not available for that purpose. It would appear that the function of a writ of mandate would more appropriately be to compel performance when no performance was forthcoming. Such performance under a writ of mandate should require a certification that sufficient appropriation exists or does not exist for the payment of a particular claim. The language of this proposed section should, therefore, be changed to specify that a writ of mandate is an appropriate remedy to compel the Director of Finance to certify that a sufficient appropriation either exists or does not exist as determined by the Director of Finance.



We did not feel it appropriate to comment on those proposals relating to local public entities. If you have not already done so, we would suggest that the Tort Law Section of the Department of Justice be given an opportunity to review this material. Thank you for allowing us to comment.

Please contact Charles C. Harper at 445-5332 if we may be of further assistance.

*Mary Ann Graves*

MARY ANN GRAVES  
Director of Finance

## EXHIBIT 10

THOMAS G. BAGGOT  
ATTORNEY AT LAW  
23717 HAWTHORNE BOULEVARD, SUITE 205  
TORRANCE, CALIFORNIA 90505  
TELEPHONE 373-9397

November 7, 1979


Mr. John H. DeMouilly  
Executive Secretary  
California Law Revision Commission  
Stanford Law School  
Stanford, CA 94305

Re: Tentative Recommendation: Enforcement of  
Claims and Judgments Against Public Entities

Dear Mr. DeMouilly:

As you know, I am the chairman of the State Bar Committee  
Condemnation. I recently received a copy of the above  
recommendation of the Law Revision Committee. I note  
that comments on this recommendation should be sent to  
the Commission not later than November 10, 1979. The first  
meeting of our committee is set for November 17. The  
Committee can study this recommendation and submit comments,  
if you wish. This would be done by a subcommittee appointed  
at our November 17th meeting which would report to the full  
committee at our January 12th meeting. Shortly thereafter,  
we could have our comments to you. Please advise if you  
wish us to proceed with this matter or, because of the timing,  
wish us not to proceed with the matter.

Very truly yours,

  
THOMAS G. BAGGOT

TGB:lc

EXHIBIT 11  
PUBLIC LAW SECTION  
THE STATE BAR OF CALIFORNIA

PAUL F. DAUER, *Chair*  
SACRAMENTO  
ROBERT L. HARRIS, *Vice-Chair*  
SAN FRANCISCO  
ANGELE KHACHADOUR, *Secretary-Treasurer*  
SAN FRANCISCO



STAFF  
MARY VAIL, *Staff Counsel*  
BONNIE VAIL, *Section Administrator*

555 FRANKLIN STREET  
SAN FRANCISCO 94102  
TELEPHONE 561-8220  
AREA CODE 415

EXECUTIVE COMMITTEE  
ROBERT M. ARAN, BEVERLY HILLS  
MARY LOUISE C. BERRY, ALHAMBRA  
JAMES P. BOTZ, SANTA ROSA  
JOHN B. CLAUSEN, MARTINEZ  
PAUL F. DAUER, SACRAMENTO  
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THOMAS MICHAEL GRIFFIN, SACRAMENTO  
ROBERT L. HARRIS, SAN FRANCISCO  
ANGELE KHACHADOUR, SAN FRANCISCO  
NEIL H. O'DONNELL, SAN FRANCISCO  
ROBERT L. SILLS, LOS ANGELES  
ALLEN E. SPRAGUE, FREMONT

November 9, 1979

To: Law Revision Commission

Re: Enforcement of Claims & Judgments Against Public Entities

The provision for prepayment of a judgment contained in redrafted Government Code §970.6(b) should be added to Government Code §912.6(c).

The above sections should be further amended or other appropriate provision made to exempt any settled claim or judgment payment from the limitations of California Constitution Article XIII A & B.

Yours very truly,

John B. Clausen  
Chairman, Legislative Committee  
Public Law Section

JBC:bc

cc: Paul Dauer, Chairman  
Public Law Section

EXHIBIT 12  
OFFICE OF  
**CITY ATTORNEY**  
CITY HALL EAST  
LOS ANGELES, CALIFORNIA 90012



**BURT PINES**  
CITY ATTORNEY

November 9, 1979

California Law Revision Commission  
Stanford Law School  
Stanford, California 94305

Gentlemen:

You have asked for any comments we may have on your Tentative Recommendation relating to Enforcement of Claims and Judgments Against Public Entities. We submit the following:

1. The definition of "local public agency" in Sec. 970 does not appear to us to be clearly applicable to a joint powers entity. Nor does the procedure set forth appear to take care of the situation in which the joint powers entity has no source of revenue of its own. It is one thing to obtain a judgement against or have a claim allowed by the Los Angeles Memorial Coliseum Commission (which has revenues of its own) and another where Greater Los Angeles Community Action Agency (GLACAA) is involved. The latter, which operated solely on restricted Federal grant funds, is now out of existence, has several wage judgments against it, and its only assets belong to the Federal government. Although some of the unexpended money remains in bank accounts in the name of the Los Angeles Treasurer who, because of State law, was the GLACAA Treasurer, it is still Federal money.

If your Commission could develop procedures for the described situation, I believe it would be a more comprehensive treatment.

2. Existing law contemplates that there be installment payments primarily from an annual extra property tax levy. Your proposed revisions to Sec. 971(b) appear to continue, at least in part, some of this scheme. It seems to me that Article XIII A of the Constitution effectively blocks this as to ad valorem taxes and may put serious obstacles to the use of other ("special") taxes

and Revisions should be made which recognize that the use of property taxes is effectively blocked by the Constitution, and that the availability of other taxes may be questionable.

3. Article XIII B is now with us, imposing limits on appropriations. True, Sec. 9(b) of Article XIII B exempts "mandates of the courts" from the definition of "appropriations subject to limitation," but this would not include claims allowed and payable outside of litigation. If it would be possible to define settlements in lieu of litigation as being treated as a "mandate of the court" for purposes of Article XIII B, it would encourage such settlements. A conscientious public attorney may feel compelled to avoid settlements prior to judgment in order to preserve or enlarge his client's options in selecting a method of settlement.

4. In providing for allowance of claims we have noticed that there is no express provision for the commencement of interest. If there were an express provision, recognizing that public agencies are not in the position of writing checks or issuing warrants on short notice, I believe certain controversies will be avoided.

5. If the various "Comments" accompanying your tentative draft were revised to show express consideration of the problems of Articles XIII A and XIII B, the adopted and published law would no doubt be of greater value, in clarifying its scope. These two new laws have many unfathomed effects on local government and it would be useful, in order to avoid piecemeal solutions through litigation, to have a legislative solution expressly tailored for the purpose.

Very truly yours,

BURT PINES, City Attorney

*James A. Doherty*  
BY  
JAMES A. DOHERTY  
Assistant City Attorney

## EXHIBIT 13

## WILSON, MORTON, ASSAF &amp; McELLIOTT

ERNEST A. WILSON  
 JAMES T. MORTON  
 PHILIP D. ASSAF  
 PEGGY L. McELLIOTT  
 THOMAS B. ADAMS  
 SHERROD S. DAVIS  
 LAWRENCE C. JENSEN  
 GERALD A. LASTER

JAMES L. COPELAND  
 MAYER A. DANIEL  
 \_\_\_\_\_  
 JOAN E. BRIDY  
 JAMES M. PARMELEE  
 ROBERT K. BOOTH, JR.

ATTORNEYS AND COUNSELLORS AT LAW  
 830 NORTH SAN MATEO DRIVE  
 P. O. BOX 152  
 SAN MATEO, CALIFORNIA 94401  
 [415] 342-3523

CHARLES N. KIRKBRIDE  
 1894-1911  
 KIRKBRIDE & GORDON  
 (JOSEPH B. GORDON)  
 1911-1929  
 KIRKBRIDE & WILSON  
 1929-1947  
 KIRKBRIDE, WILSON, HARTZFELD & WALLACE  
 1947-1961  
 WILSON, JONES, MORTON & LYNCH  
 1961-1977

NEWPORT BEACH OFFICE  
 SUITE 1530  
 880 NEWPORT CENTER DRIVE  
 NEWPORT BEACH, CA 92660  
 (714) 759-1801

November 9, 1979

California Law Revision Commission  
 Stanford Law School  
 Stanford, CA 94305

Subject: Tentative Recommendation Relating to Enforcement of  
 Claims and Judgments Against Public Entities

Dear Commissioners:

This firm has been engaged in the practice of municipal law for approximately 90 years; and in addition, members of the firm have served variously as general counsel for cities and special districts. The firm also engages in a personal injury and eminent domain practice on behalf of both agencies and private citizens. As such, we have extensive experience with the subject matter of this tentative recommendation, and wish to offer the following comments.

First of all, we heartily endorse the consolidation of the various claims, settlements and judgment payment provision into one convenient location. The proposed legislation appears to do this.

Secondly, we also heartily endorse the elimination of provisions for execution against some public property under some circumstances. We agree with you that the remedy is used, if at all, solely for purposes of vindictiveness and harrassment, and has little practical effect. Moreover, the potential harm to the public's business, property, and possible resulting poor publicity, all support the elimination of this remedy.

Third, we also support the clarification of the installment payment provision for level payments throughout the ten-year period. I'm sure that was the original legislative intent, but clarification would be useful.

While we recognize that your recommendation continues the existing difference regarding the obligation to pay between the state and local agencies, primarily relating to court enforceability of the judgment, we wish to urge that either the state be subject to the same enforceability provisions as local agencies, or vice versa. As we read the proposal, state officials can only be mandated to pay judgment claims or settlements where sufficient funds have been appropriated for that

November 9, 1979

purpose by the Legislature. On the otherhand, the provisions relating to local agencies seem to allow the writ of mandate to compel payment, whether or not an appropriation has been made. We do not think it is fair to protect the State Legislature if it, for even improper reasons, fails, neglects or refuses to make an appropriation to pay any particular claim, settlement or judgment, while exposing local agencies to the contempt and other powers of the court available with respect to claims, settlements and judgments against them. A most unfortunate situation could arise, for example, where mandate is brought against appointed local officials, such as city managers or finance officers, who find themselves unable to comply because of lack of appropriation or failure of the governing board to authorize an appropriate transfer of previously budgeted funds. We believe that the legislative bodies of local agencies and the State should be treated identically. Either courts should have the power to mandate that appropriations be made in the next budget year, or a similar remedy for all elected legislators, or they should not.

Earlier this year, this office had the unpleasant experience wherein one of our private clients recovered a substantial eminent domain judgment against the United States government, which exceeded the amount deposited in court by a significant amount. The U.S. Congress did not appropriate any funds to pay this judgment for a period in excess of two years, with resulting grave hardship for our client. (Under federal eminent domain, the abandonment remedy such as is contained in C.C.P. 1268.020 does not exist.) Perhaps the Commission should consider allowing execution and/or mandate, where the Legislature has willfully failed to make an appropriation to pay a claim, settlement or judgment. As an alternative, at least the liability of local elected and appointed officials for contempt and other powers under writ of mandate should be at least equal to those proposed for the State, under those circumstances. The legislation should also provide, if it is permissible to do so, a mandatory duty upon the State or the agency to make such an appropriation. Perhaps the judgment creditor would be entitled to additional damages, including consequential damages and attorney's fees, for failure to so make.

With the adoption of Proposition 4 by the electorate this week, your recommendation perhaps should at least discuss the effects of the enactment of Article XIII B upon this proposal. Maybe no additional legislation would be necessary, but it would appear that in the case of local agencies particularly, and the severe restrictions upon their ability to raise revenues, that compliance with a large judgment, even payable in installments, may be difficult unless the same is removed from the coverage of Article XIII B. We have not researched this point in depth, but merely suggest that it be given consideration. An initial analysis might support the conclusion that Section 9(b) of Article XIII B is broad enough to cover claims, settlements and judgments. The Legislature may also have the power to

November 9, 1979

redefine the terms, such as "appropriations subject to limitation", as not including claims, settlements and judgments.

While it is probably beyond the scope of the present recommendation, we continue to believe that there are serious legal problems, as well as a basically unfair burden on state and local governmental entities, from the existing law that one joint tortfeasor is responsible for the entire judgment, irrespective of the degree of fault. While an argument can be made that perhaps the injured parties should not be the one to suffer; nevertheless, we believe it is an unfair burden to place upon the general tax payer to pay for tortious conduct of third parties, merely when fortuitously they have been able to include a public agency as one of the tortfeasors, frequently through passive conduct, or condition of public facilities, rather than active negligence. Current figures show an alarming increase in the number and dollar amount of judgments and settlements arising out of this rule, when coupled with the comparative fault doctrine which is now the law in this state.

We hope the foregoing comments will be useful to you. We would be pleased to provide additional information or discuss any of these comments at your request.

Very truly yours,

WILSON, MORTON, ASSAF & McCELLIGOTT



Robert K. Booth, Jr.

RKBjr/sms



D-320

STATE OF CALIFORNIA  
CALIFORNIA LAW  
REVISION COMMISSION

RECOMMENDATION

relating to

ENFORCEMENT OF CLAIMS AND JUDGMENTS  
AGAINST PUBLIC ENTITIES

November 1979

CALIFORNIA LAW REVISION COMMISSION  
Stanford Law School  
Stanford, California 94305

## RECOMMENDATION

relating to

## ENFORCEMENT OF CLAIMS AND JUDGMENTS AGAINST PUBLIC ENTITIES

## INTRODUCTION

Division 3.6 (commencing with Section 810) of Title 1 of the Government Code governs the presentation and payment of claims for money or damages against the state<sup>1</sup> and local public entities,<sup>2</sup> the payment of money judgments against the state,<sup>3</sup> and the payment of judgments against local public entities founded on tort or inverse condemnation liability.<sup>4</sup> Other statutory provisions require cities and counties,<sup>5</sup> school districts,<sup>6</sup> community college districts,<sup>7</sup> and county water districts<sup>8</sup> to pay all judgments, but there is no general requirement that other local public entities pay all judgments.<sup>9</sup> The duty of a public entity to pay

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1. See generally Gov't Code §§ 900-930.6, 935.6-944, 945.4-948, 950-950.6, 965-965.4.
  2. See generally Gov't Code §§ 900-915.4, 930.2-935.4, 940-940.4, 942, 945.4-947, 950-950.8. See also Gov't Code §§ 989.2-991.2 (insurance by local public entity against liability).
  3. See, e.g., Gov't Code §§ 912.8, 920-920.8, 925-926.8, 935.6, 955.5, 965-965.4. See also Gov't Code § 11007.4 (insurance by state agency against liability).
  4. Gov't Code §§ 970-971.2. See also Gov't Code §§ 975-978.8 (funding judgments with bonds).
  5. Gov't Code §§ 50170-50175.
  6. Educ. Code § 35201.
  7. Educ. Code § 72501.
  8. Water Code §§ 31091-31096.
  9. But see Water Code Section 74505 which requires a water conservation district to "provide for the payment, from the proper fund, of all the debts and just claims against the district." See also Code Civ. Proc. § 1268.020 (eminent domain judgment enforceable by "execution as in a civil case").

an allowed claim or a judgment as required by the applicable statutory provision is enforced by writ of mandate.<sup>10</sup>

The ordinary remedies of a judgment creditor under the Code of Civil Procedure are seldom resorted to and are not an effective means to collect a judgment against a public entity. Property of the state is exempt from execution<sup>11</sup> except in those rare instances where a statute expressly provides otherwise.<sup>12</sup> Whether property of a local public entity is subject to execution depends on the purpose for which the property is held: Property held or used for a public use is exempt from execution, but property not held or used for a public use is subject to execution.<sup>13</sup> In addition, there are a number of statutory exemptions

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10. See, e.g., Gov't Code §§ 942, 955.5, 970.2. See also A. Van Alstyne, California Government Tort Liability § 9.14, at 423 (Cal. Cont. Ed. Bar 1964). Mandamus may be used to compel payment of a judgment when sufficient funds exist from which to make the payment. *Emeric v. Gilman*, 10 Cal. 404 (1858) (county). When sufficient funds do not exist, mandamus may be used to compel a local public entity to levy taxes required to pay the judgment. *Title Guar. & Trust Co. v. City of Long Beach*, 4 Cal.2d 56, 47 P.2d 472 (1935); *Cook v. Board of Supervisors*, 99 Cal. App. 169, 277 P. 1064 (1929). However, with respect to the State of California, the passage of an appropriation law is a legislative act which a court may not command. *Myers v. English*, 9 Cal. 341 (1858); *Veterans of Foreign Wars v. State*, 36 Cal. App.3d 688, 111 Cal. Rptr. 750 (1974); *California State Employees' Ass'n v. State*, 32 Cal. App.3d 103, 108 Cal. Rptr. 60 (1973).
  11. *Westinghouse Elec. & Mfg. Co. v. Chambers*, 169 Cal. 131, 145 P. 1025 (1915); *Meyer v. State Land Settlement Bd.*, 104 Cal. App. 577, 286 P. 743 (1930). See also Gov't Code § 955.5.
  12. E.g., Code Civ. Proc. § 1268.020 (eminent domain judgment enforceable by execution as in a civil case). See also *Maurice L. Bein, Inc. v. Housing Auth.*, 157 Cal. App.2d 670, 690, 321 P.2d 753, 766 (1958) (holding that the absence of a reference to the personal property of a housing authority in Section 34217 of the Health and Safety Code indicated a legislative intent to permit execution against the personal property of the Housing Authority of the City of Los Angeles, an "administrative arm" of the state).
  13. *Marin Water & Power Co. v. Town of Sausalito*, 49 Cal. App. 78, 83, 193 P. 294, \_\_\_ (1920) (opinion of Supreme Court denying hearing and stating the governing rules); *C. J. Kubach Co. v. City of Long Beach*, 8 Cal. App.2d 567, 48 P.2d 181 (1935).

from execution for particular kinds of property owned by a public entity<sup>14</sup> as well as blanket exemptions for property of certain public entities.<sup>15</sup>

As a part of its overall review of the law relating to creditors' remedies, the Commission has reviewed the remedies a creditor has against a public entity debtor. The Commission has concluded that the procedures for payment of claims and judgments against public entities should be revised to impose more clearly a duty to pay an approved claim or final judgment and to provide by statute that a writ of mandate is an appropriate remedy to enforce this duty. In addition, it should be expressly provided by statute that execution and other remedies ordinarily used to enforce a judgment are not available to enforce a money judgment against a public entity.

#### RECOMMENDATIONS

##### Payment of Claims and Judgments Against Local Public Entities

Payment of judgments. A local public entity is now required by statute to pay a tort or inverse condemnation judgment<sup>16</sup> and may pay the judgment in not exceeding 10 annual installments where necessary to avoid unreasonable hardship.<sup>17</sup> With respect to other judgments, the existing statutes do not always ensure that local public entities have

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14. Code Civ. Proc. § 690.22 (exemption for courthouses, jails, fire companies, public offices, public buildings, lots, grounds, and personal property, including automotive and truck equipment, fixtures, furniture, books, papers, and the like).
  15. Code Civ. Proc. §§ 690.26 (property of the Reclamation Board and the Sacramento and San Joaquin Drainage District), 690.27 (real property of housing authority), 690.29 (property of redevelopment agency); Health & Safety Code §§ 33124 (property of redevelopment agency), 34217 (real property of housing authority).
  16. Gov't Code §§ 970-971.2.
  17. A judgment may be paid in installments only if the local public entity has adopted an ordinance or resolution finding that an unreasonable hardship will result unless the judgment is paid in installments and the court in which the judgment is entered, after hearing, has found that payment of the judgment in installments as ordered by the court is necessary to avoid an unreasonable hardship. Gov't Code § 970.6.

the duty to pay judgments for which they are liable.<sup>18</sup> As a result, the plaintiff in some cases may have no means to enforce a money judgment against a local public entity.<sup>19</sup>

The Commission recommends that the statutory provisions relating to payment of tort and inverse condemnation judgments by local public entities be expanded to cover all money judgments.<sup>20</sup> This will permit the judgment creditor to obtain a writ of mandate to compel the public entity to pay the judgment and will permit installment payments in appropriate cases.<sup>21</sup>

The existing statute authorizing installment payments requires that each installment include an equal amount of the principal of the judgment, together with the accrued interest.<sup>22</sup> This requirement tends to defeat the purpose of minimizing the disruptive effect of an unusually large judgment since the installment payments required during the first

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18. There is no general statute requiring local public entities to pay judgments. Cities, counties, school districts, community college districts, and county water districts are required by statute to pay all judgments and to raise funds sufficient to make the payment. See statutes cited in notes 5-10 supra.
  19. The use of execution against property of a local public entity is an ineffective means of collecting a judgment since all property of a local public entity used or held for public use is exempt from execution. See note 13 supra.
  20. The expansion of the coverage of the existing statute will require revision of Government Code Section 971 (relating to applicability of limitations on amount of taxes, assessments or rates and charges, amount of appropriations and payments, and amount of liability or indebtedness) to continue the rule that such limits do not apply to tort and inverse condemnation judgments and to expand the rule to include other money judgments that result from a nondiscretionary act.
  21. The existing statutes applicable to cities and counties (Gov't Code § 50173), school districts (Educ. Code § 35201), community college districts (Educ. Code § 72501), and county water districts (Water Code § 31094) permit the governing board to provide for installment payment of judgments without the need to obtain a court order authorizing installment payments. These existing provisions do not adequately protect the judgment creditor against possible abuse of the authority to pay the judgment in installments and will be superseded by the provision of the recommended comprehensive statute which continues the more recently enacted provision that requires a court order authorizing payment in installments.
  22. Gov't Code § 970.6(c).

few years of the 10-year period will be substantially greater in amount than the payments required in the last few years. The statute should be amended to require that each installment payment (which will consist of a portion of the principal and the accrued interest) be equal in amount. Under this new requirement, the amount of the principal paid in each installment will increase with each payment since the amount of accrued interest required to be included in each payment will decrease as the amount of the unpaid principal of the judgment decreases.

The recommended comprehensive statute will supersede existing provisions applicable to some types of local public entities and those provisions should be repealed.<sup>23</sup>

Payment of allowed claims. Existing law provides that a writ of mandate is an appropriate remedy to compel a local public entity to pay a claim when and to the extent that it has been allowed.<sup>24</sup> The manner in which the claim is to be paid is not specified in the statute. To supply this detail, the Commission recommends that a provision be added to the statute requiring that an approved claim be paid by the local public entity in the same manner as a judgment, but that installment payments be permitted only if the claimant has agreed to that method of payment. Use of an agreement permitting payment of an approved claim in installments will avoid unreasonable hardship to the local public entity and may in some cases facilitate settlement of a claim without the need for the claimant to prosecute the claim to judgment.

#### Payment of Claims and Judgments Against the State

The existing statute requires payment of an approved claim or judgment against the state if the Director of Finance has certified that a sufficient appropriation exists for payment.<sup>25</sup> No such certificate is

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23. The enactment of the comprehensive statute would permit repeal of Sections 35201 and 72501 of the Education Code, Sections 50170-50175 of the Government Code, and Sections 31091-31096 of the Water Code.

24. See Gov't Code § 942.

25. Gov't Code §§ 965 (payment of claim allowed by State Board of Control), 965.2 (Controller's duty to draw warrant for payment of final judgment or settlement). See also Gov't Code §§ 935.6 (delegation of authority to state agency to adjust and pay claims), 948 (settlement, adjustment, or compromise of pending action), 955.5 (payment of tort liability claim, settlement, or judgment).

required if the claim or judgment arises out of the activities of the "Department of Public Works" (now the Department of Transportation), and it is unclear when payment of an approved claim or judgment arising out of the activities of the department can be required.<sup>26</sup> Payment of the approved claim or judgment may be compelled by writ of mandamus if there is a sufficient appropriation for its payment.<sup>27</sup> Where sufficient funds have not been appropriated to pay the claim or judgment, the State Board of Control makes a report to the Legislature containing the board's findings and recommendations concerning the claim or judgment.<sup>28</sup> This permits the Legislature to make provision for the payment of the claim or judgment.

The provisions outlined above provide a generally satisfactory procedure for enforcing payment of an approved claim or judgment against the state. However, the following technical revisions are recommended:

(1) Section 942 of the Government Code--which permits resort to a writ of mandate to compel payment of a claim "when and to the extent it has been allowed"--should be revised to add the requirement that the claim also be one that "is required by this division to be paid." This addition will make clear that a writ of mandate cannot be used to compel payment where there is no sufficient appropriation for the payment. Instead, the claim or judgment will be reported to the Legislature so that provision can be made for its payment.

(2) Since the need no longer exists for special treatment of a claim or judgment against the Department of Transportation,<sup>29</sup> these

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26. See provisions cited in note 25 supra.

27. See Gov't Code § 942. But see Gov't Code § 955.5.

28. See Gov't Code §§ 912.8, 965, 965.4.

29. The various statutory provisions that exclude the Department of Public Works (now the Department of Transportation) from their application should be amended to delete the exclusion. These exclusions were originally included because formerly the funds of the Department of Public Works were continuously appropriated for the purposes of the department, and the department did not require specific appropriation of its funds by the Legislature. See Sts. & Hy. Code § 183, as amended by 1957 Cal. Stats. ch. 1607, § 2. This situation no longer exists; later enacted statutes prohibit expenditure of funds unless specifically appropriated by the Legislature. See Sts. & Hy. Code § 183, enacted by 1977 Cal. Stats. ch. 1106, § 49. See also Gov't Code § 13340.

claims and judgments should be treated the same as those against other state agencies.<sup>30</sup>

#### Use of Execution to Enforce Judgment Against Public Entity

Execution and the other remedies provided a judgment creditor under the Code of Civil Procedure should be eliminated as a method of enforcing a money judgment against a public entity. The procedure recommended above for enforcing money judgments against public entities takes into account their special nature. Making clear that execution is not available to enforce a judgment against a public entity will protect against the possibility of seizure and sale of public property to satisfy a judgment. Litigation to determine the status of public property will be avoided. Yet the judgment creditor will not be significantly harmed because levy of execution on public property has not been an effective method of enforcing a judgment against a public entity.

The general provisions prescribing the period during which an ordinary judgment is enforceable<sup>31</sup> are designed to implement the procedure for execution against property of the judgment debtor. Since execution against public property will not be permitted, the period of enforceability of a money judgment against a public entity should be separately specified in the statute: A judgment for the payment of money against the state or a local public entity should be enforceable for 10 years after the time the judgment becomes final.<sup>32</sup> This 10-year period allows adequate time for the judgment creditor to compel payment by a writ of mandate if the public entity fails to pay the judgment as required by statute.

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30. The recommended legislation includes a provision to make clear that the Regents of the University of California is not subject to the statutory provisions governing payment of claims, settlements, and judgments. This provision is consistent with Sections 905.6 and 943 and the existing practice. See Ltr. Donald L. Reidhaar, General Counsel, The Regents of the University of California, dated Oct. 5, 1979, on file in office of the California Law Revision Commission.

31. Code Civ. Proc. §§ 681, 685.

32. If the judgment is payable in installments, the period during which the judgment is enforceable should expire 10 years after the final payment becomes due.



PROPOSED LEGISLATION

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

An act to amend Section 1268.020 of the Code of Civil Procedure, to repeal Sections 35201 and 72501 of the Education Code, to amend Sections 912.6, 935.6, 942, 948, 955.6, 965, 965.2, 970, 970.4, 970.6, 970.8, and 971 of, to add Sections 965.5, 965.6, 965.7, 965.8, 965.9, 970.1, and 970.5 to, and to repeal Section 955.5 and Article 7 (commencing with Section 50170) of Chapter 1 of Part 1 of Division 1 of Title 5 of, the Government Code, and to repeal Sections 31091, 31092, 31093, 31094, 31095, and 31096 of the Water Code, relating to claims and judgments against public entities.

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

406/194

Code of Civil Procedure § 1268.020 (amended). Remedies if eminent domain judgment not paid

SECTION 1. Section 1268.020 of the Code of Civil Procedure is amended to read:

1268.020. (a) If the plaintiff fails to pay the full amount required by the judgment within the time specified in Section 1268.010, the defendant may ~~have execution~~ :

(1) If the plaintiff is a public entity, enforce the judgment as provided in Division 3.6 (commencing with Section 810) of Title 1 of the Government Code.

(2) If the plaintiff is not a public entity, enforce the judgment as in a civil case.

(b) Upon noticed motion of the defendant, the court shall enter judgment dismissing the eminent domain proceeding if all of the following are established:

(1) The plaintiff failed to pay the full amount required by the judgment within the time specified in Section 1268.010.

(2) The defendant has filed in court and served upon the plaintiff, by registered or certified mail, a written notice of the plaintiff's failure to pay the full amount required by the judgment within the time specified in Section 1268.010.

(3) The plaintiff has failed for 20 days after service of the notice under paragraph (2) to pay the full amount required by the judgment in the manner provided in subdivision (b) of Section 1268.010.

(c) The defendant may elect to exercise the remedy provided by subdivision (b) without attempting to use the remedy provided by subdivision (a).

Comment. Section 1268.020 is amended to make clear that the eminent domain judgment is enforced against a public entity under the Government Code provisions relating to payment of judgments against public entities. See Gov't Code §§ 965-965.9 (judgment against the state), 970-971.2 (judgment against local public entity). The judgment is not enforceable against a public entity by execution or other remedies provided a judgment creditor under the Code of Civil Procedure. See Gov't Code §§ 965.5(b) (state), 970.1(b) (local public entity). See also Gov't Code §§ 965.7, 965.8, 970.2 (writ of mandate to compel payment of money judgment). The Regents of the University of California is not subject to the applicable provisions of Division 3.6 (see Gov't Code § 965.9). Hence, the judgment is enforceable under paragraph (2) of subdivision (a) if the plaintiff is the Regents of the University of California.

406/162

Education Code § 35201 (repealed). Payment of judgment against school district

SEC. 2. Section 35201 of the Education Code is repealed.

~~35201. The governing board of any school district shall pay any judgment for debts, liabilities, or damages out of the school funds to the credit of the district, subject to the limitation on the use of the funds provided in the Constitution. If any judgment is not paid during the tax year in which it was recovered.~~

~~(a) And if, in the opinion of the board, the amount is not too great to be paid out of taxes for the ensuing year, the board shall include in its budget for the ensuing tax year a provision to pay the judgment, and shall pay it immediately upon the obtaining of sufficient funds for that purpose.~~

~~(b) And if, in the opinion of the board, the amount of the judgment is so great that undue hardship will arise if the entire amount is paid out of taxes for the next ensuing tax year, the board shall provide for the payment of the judgment in not exceeding 10 annual installments with~~

interest thereon up to the date of each payment, and shall include provision for the payment in each budget for not exceeding 10 consecutive tax years next ensuing. Each payment shall be of an equal portion of the principal of the judgment, except that the board, in its discretion, may provide for the prepayment of any one or more installments or any part of an installment.

Comment. Former Section 35201 is superseded by the comprehensive statute relating to payment of money judgments against local public entities. See Gov't Code §§ 970-971.2.

406/163

Education Code § 72501 (repealed). Payment of judgment against community college district

SEC. 3. Section 72501 of the Education Code is repealed.

~~72501.~~ The governing board of any community college district shall pay any judgment for debts, liabilities, or damages out of the funds to the credit of the district, subject to the limitation on the use of the funds provided in the California Constitution. If any judgment is not paid during the tax year in which it was recovered.

(a) And if, in the opinion of the board, the amount is not too great to be paid out of taxes for the ensuing year, the board shall include in its budget for the ensuing tax year a provision to pay the judgment, and shall pay it immediately upon the obtaining of sufficient funds for that purpose.

(b) And if, in the opinion of the board, the amount of the judgment is so great that undue hardship will arise if the entire amount is paid out of taxes for the next ensuing tax year, the board shall provide for the payment of the judgment in not exceeding 10 annual installments with interest thereon up to the date of each payment, and shall include provision for the payment in each budget for not exceeding 10 consecutive tax years next ensuing. Each payment shall be of an equal portion of the principal of the judgment, except that the board, in its discretion, may provide for the prepayment of any one or more installments or any part of an installment.

Comment. Former Section 72501 is superseded by the comprehensive statute relating to the payment of money judgments against local public entities. See Gov't Code 970-971.2.

Government Code § 912.6 (amended). Action on claims by local public entity; payment of approved claims

SEC. 4. Section 912.6 of the Government Code is amended to read:

912.6. (a) In the case of a claim against a local public entity, the board may act on a claim in one of the following ways:

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

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

(3) If the board finds the claim is a proper charge against the public entity but is for an amount greater than is justly due, it shall either reject the claim or allow it in the amount justly due and reject it as to the balance.

(4) If legal liability of the public entity or the amount justly due is disputed, the board may reject the claim or may compromise the claim.

(b) In the case of a claim against a local public entity, if the board allows the claim in whole or in part or compromises the claim, it may require the claimant, if ~~he~~ the claimant accepts the amount allowed or offered to settle the claim, to accept it in settlement of the entire claim.

(c) Subject to subdivision (b), the local public entity shall pay the amount allowed on the claim or in compromise of the claim in the same manner as if the claimant had obtained a final judgment against the local public entity for that amount, but the claim may be paid in not exceeding 10 equal annual installments as provided in Section 970.6 only if the claimant agrees in writing to that method of payment and in such case no court order authorizing installment payments is required. If an agreement for payment of the claim in installments is made, the local public entity, in its discretion, may prepay any one or more installments or any part of an installment.

Comment. Section 912.6 is amended to add subdivision (c) which provides a means of enforcing the payment of the amount allowed on a claim or in compromise of a claim. See Section 942 (writ of mandate to compel payment). See also Sections 970-971.2 (payment of money judgments against local public entities).

Government Code § 935.6 (amended). Delegation of authority to state agency to adjust and pay claims

SEC. 5. Section 935.6 of the Government Code is amended to read:

935.6. (a) The State Board of Control, by rule, may authorize any state agency to adjust and pay claims where the settlement does not exceed one thousand dollars (\$1,000) or such lesser amount as the board may determine and ~~except for claims arising from the activities of the Department of Public Works,~~ the Director of Finance certifies that a sufficient appropriation for ~~such~~ the payment of such claims exists.

(b) Payments shall be made only upon approval of the settlement by the board.

(c) As used in this section, "state agency" means any office, officer, department, division, bureau, board, commission or agency of the state claims against which are paid by warrants drawn by the Controller.

Comment. Section 935.6 is amended to eliminate the exclusion for claims arising from activities of the "Department of Public Works," now the Department of Transportation.

Government Code § 942 (amended). Writ of mandate and other remedies

SEC. 6. Section 942 of the Government Code is amended to read:

942. Nothing in this division shall be construed to deprive a claimant of the right to resort to writ of mandate or other proceeding against the public entity or the board or any employee of the public entity to compel ~~it or him to pay the~~ payment of a claim when and to the extent it has been allowed and is required by this division to be paid .

Comment. Section 942 is amended to limit the application of the section to cases where a claim is required by this division to be paid. In the case of the state, a claim is required to be paid only where the Director of Finance certifies that there is a sufficient appropriation for the payment of the claim. See, e.g., Sections 935.6, 965, 965.6. See also Section 965.8 (writ of mandate to compel Director of Finance to certify that sufficient appropriation exists). A writ of mandate is not

available where no such sufficient appropriation exists. See *Veterans of Foreign Wars v. State*, 36 Cal. App.3d 688, 697, 111 Cal. Rptr. 750, 756 (1974) ("judgment against the state, even when authorized by law, may be paid only out of appropriated funds"). Instead, the claim is reported to the Legislature. See Sections 912.8, 965, and 965.4. A writ of mandate is an appropriate remedy to compel a local public entity to pay an allowed claim. See Sections 912.6(c) and 970.2.

405/877

Government Code § 948 (amended). Settlement, adjustment or compromise of pending action by head of state agency

SEC. 7. Section 948 of the Government Code is amended to read:

948. (a) The head of the state agency concerned, upon recommendation of the Attorney General or other attorney authorized to represent the state, may settle, adjust or compromise any pending action where ~~r~~ ~~except for an action arising from the activities of the Department of Public Works,~~ the Director of Finance certifies that a sufficient appropriation for the payment of claims exists.

(b) Where no funds or insufficient funds for such payment exist, the head of the state agency concerned, upon recommendation of the Attorney General or other attorney authorized to represent the state, may settle, adjust or compromise any pending action with the approval of the Department of Finance ~~,~~ and the State Board of Control shall report such settlement, adjustment or compromise to the Legislature in accordance with Section 912.8 .

(c) As used in this section, "state agency" means any office, officer, department, division, bureau, board, commission or agency of the state claims against which are paid by warrants drawn by the Controller.

Comment. Section 948 is amended to delete the former exclusion for the "Department of Public Works" (now the Department of Transportation) and to add a provision in subdivision (b) for reporting the settlement, adjustment, or compromise to the Legislature so that provision for payment may be made. See also Sections 965-965.4.

406/191

Government Code § 955.5 (repealed). Compelling payment of tort liability claim, settlement, or judgment

SEC. 8. Section 955.5 of the Government Code is repealed.

~~955.5. Notwithstanding any other provision of law, including Section 942 of this code, neither the state, nor any of its officers or~~

employees, can be required by any court in any proceeding to pay or offset a tort liability claim, settlement or judgment for which the state is liable unless the Legislature has authorized the payment or offset of a specific tort liability claim, settlement or judgment, or the Director of Finance has certified that a sufficient appropriation for such payment or to provide for the offset exists. No money or property belonging to, in the custody of, or owing to the state or any state agency is subject to garnishment, execution, or attachment or any other proceeding for enforcing any such claim, settlement or judgment.

Comment. The first sentence of Section 955.5 is superseded by Section 965.6. The second sentence is superseded by subdivision (b) of Section 965.5.

968/670

Government Code § 955.6 (amended). Actions against Department of Transportation for taking or damaging of property

SEC. 9. Section 955.6 of the Government Code is amended to read:

955.6. In actions for the taking or damaging of private property for public use within the meaning of Section 14 of Article I of the Constitution on claims arising out of work done by the Department of Public Works Transportation :

(a) Service of summons shall be made on the Attorney General or the Director of Public Works Transportation .

(b) The defense shall be conducted by the attorney for the Department of Public Works Transportation .

Comment. Section 955.6 is amended to substitute references to the Director of Transportation and Department of Transportation. This reflects the fact that the Department of Transportation has replaced the Department of Public Works. See Sts. & Hy. Code § 20.

406/119

Government Code § 965 (amended). Payment of claim; report to Legislature where no sufficient appropriation

SEC. 10. Section 965 of the Government Code is amended to read:

965. Upon the allowance by the State Board of Control of all or part of a claim for which  ~~, except for a claim arising from the activities of the Department of Public Works,~~ the Director of Finance certifies

that a sufficient appropriation for the payment of the claim exists, and the execution and presentation of such documents as the board may require which discharge the state of all liability under the claim, the board shall designate the fund from which the claim is to be paid and the state agency concerned shall pay the claim from such fund. Where no sufficient appropriation for such payment is available, the board shall report to the Legislature in accordance with Section 912.8.

Comment. Section 965 is amended to make clear that the Department of Transportation (formerly the Department of Public Works) has the duty to pay a claim allowed by the Board of Control when the requirements of the section are satisfied. See Sections 965.7 and 965.8 (compelling performance by writ of mandate).

406/192

Government Code § 965.2 (amended). Drawing warrant for payment of final judgment or settlement

SEC. 11. Section 965.2 of the Government Code is amended to read:

965.2. The Controller shall draw ~~his~~ a warrant for the payment of any final judgment or settlement against the state whenever, ~~except where the judgment or settlement arose out of the activities of the Department of Public Works,~~ the Director of Finance certifies that a sufficient appropriation for ~~such~~ the payment of such judgment or settlement exists. Claims upon such judgments and settlements are exempt from Section 925.6.

Comment. Section 965.2 is amended to eliminate the exclusion of the Department of Transportation (formerly the Department of Public Works) from the application of the section. A writ of mandate is an appropriate remedy to compel the Director of Finance to certify that a sufficient appropriation exists for the payment if such appropriation does in fact exist. See Sections 965.7 and 965.8.

406/108

Government Code § 965.5 (added). Period of enforceability of judgment; limitation on means of enforcement

SEC. 12. Section 965.5 is added to the Government Code, to read:

965.5. (a) A judgment for the payment of money against the state or a state agency is enforceable until 10 years after the time the judgment becomes final or, if the judgment is payable in installments, until 10 years after the final installment becomes due.



(b) A judgment for the payment of money against the state or a state agency is not enforceable under Title 9 (commencing with Section 681) of Part 2 of the Code of Civil Procedure but is enforceable under this chapter.

Comment. Section 965.5 is a new provision that prescribes the time within which a money judgment against the state or a state agency is enforceable and the method of enforcement.

The 10-year period provided in subdivision (a) is drawn from Code of Civil Procedure Section 681. Subdivision (a)—not Code of Civil Procedure Sections 681 and 685—prescribes the period of enforceability of a money judgment against the state or a state agency. Where the judgment is payable in installments, the 10-year period commences to run when the last installment becomes payable.

Subdivision (b) is drawn from the second sentence of former Section 955.5 but subdivision (b) applies to all money judgments, whereas the provision of former Section 955.5 was limited to a tort liability claim, settlement, or judgment. See also Section 965.6. Subdivision (b) is consistent with the general rule under case law. See *Westinghouse Elec. & Mfg. Co. v. Chambers*, 169 Cal. 131, 145 P. 1025 (1915); *Meyer v. State Land Settlement Bd.*, 104 Cal. App. 577, 286 P. 743 (1930).

405/787

Government Code § 965.6 (added). Compelling payment of tort liability claim, settlement, or judgment

SEC. 13. Section 965.6 is added to the Government Code, to read:

965.6. Notwithstanding any other provision of law, neither the state, nor any of its officers or employees, can be required by any court in any proceeding to pay or offset a tort liability claim, settlement, or judgment for which the state is liable unless one of the following conditions exists:

(a) The Legislature has authorized the payment or offset of the specific tort liability claim, settlement, or judgment.

(b) The Director of Finance has certified that a sufficient appropriation for the payment of the claim, settlement, or judgment or to provide for such offset exists.

Comment. Section 965.6 continues the substance of the first sentence of former Section 955.5.

Government Code § 965.7 (added). Compelling performance by writ of mandate

SEC. 14. Section 965.7 is added to the Government Code, to read:

965.7. (a) A writ of mandate is an appropriate remedy to compel the state, or an officer or employee of the state, to perform any act required by this chapter.

(b) Nothing in this division affects the discretion of the Legislature in determining whether or not to:

(1) Make an appropriation for the payment of a claim, compromise, settlement, or judgment or to provide an offset for a claim, compromise, settlement, or judgment.

(2) Authorize such a payment or offset.

Comment. Section 965.7 is a new provision that makes clear that the state, or an officer or employee, can be compelled to pay an approved claim, settlement, compromise, or judgment when required by this chapter or to perform other duties under this chapter. Payment can be compelled only where there is a sufficient appropriation for the payment of the claim, settlement, compromise, or judgment. See Section 765.8. The traditional forms of enforcement of a money judgment (execution and other remedies under the Code of Civil Procedure) are not available to enforce a judgment against the state or a state agency. See Section 965.5(b). See also Sections 942 (writ of mandate to compel payment of allowed claim when payment is required to be made), 965.6 (necessity of authorization of payment of tort claims), 965.8 (writ of mandate to compel Director of Finance to certify that sufficient appropriation exists for payment). But see Section 765.9 (Regents of the University of California).

Subdivision (b) is included to make clear that a writ of mandate may not be used to compel the Legislature to make an appropriation or to authorize a payment or offset. This codifies existing law. See *Myers v. English*, 9 Cal. 341 (1858); *Veterans of Foreign Wars v. State*, 36 Cal. App.3d 688, 111 Cal. Rptr. 750 (1974); *California State Employees' Ass'n v. State*, 32 Cal. App.3d 103, 108 Cal. Rptr. 60 (1973).

Government Code § 965.8 (added). Writ of mandate to compel Director of Finance to certify that sufficient appropriation exists

SEC. 15. Section 965.8 is added to the Government Code, to read:

965.8. Where any provision of this division requires a certificate of the Director of Finance that a sufficient appropriation exists for the payment of a claim, settlement, compromise, or judgment or requires

a certificate of the Director of Finance that a sufficient appropriation exists to provide for an offset, a writ of mandate is an appropriate remedy to compel the Director of Finance to so certify if a sufficient appropriation in fact exists for that purpose.

Comment. Section 965.8 is a new provision that makes clear that a writ of mandate is an appropriate remedy if the Director of Finance wrongfully fails or refuses to certify that a sufficient appropriation exists when one does in fact exist.

968/683

Government Code § 965.9 (added). Inapplicability of chapter to claims and judgments against Regents of the University of California

SEC. 16. Section 965.9 is added to the Government Code, to read:

965.9. This chapter does not apply to claims, settlements, and judgments against the Regents of the University of California.

Comment. Section 965.9 makes clear that this chapter does not apply to claims, settlements, and judgments against the University of California. The section is consistent with Sections 905.6 and 943.

406/172

Government Code § 970 (amended). Definitions

SEC. 17. Section 970 of the Government Code is amended to read:

970. As used in this article:

(a) "Fiscal year" means a year beginning on July 1 and ending on June 30 unless the local public entity has adopted a different fiscal year as authorized by law, in which case "fiscal year" means the fiscal year adopted by such local public entity.

(b) "Judgment" means a final judgment for the payment of money rendered against a local public entity ~~which is founded upon tort or inverse condemnation liability~~ .

(c) "Local public entity" includes a county, city, district, public authority, public agency, and any other political subdivision or public corporation in the state, but does not include the Regents of the University of California and does not include the state or any office, officer, department, division, bureau, board, commission or agency of the state claims against which are paid by warrants drawn by the Controller.

Comment. Section 970 is amended to expand the definition of "judgment" to include all money judgments. This change makes this article a comprehensive statute that applies to money judgments generally without limitation. See Recommendation Relating to Enforcement of Claims and Judgments Against Public Entities, 15 Cal. L. Revision Comm'n Reports (1981).

The expansion of the scope of this article permits the repeal of a number of special statutes applying to particular types of local public entities: Educ. Code §§ 35201 (duty of school district to pay "any judgment for debts, liabilities, or damages"), 72501 (duty of community college district to pay "any judgment for debts, liabilities, or damages"); Gov't Code §§ 50170-50175 (duty of city or county to pay any "final judgment"); Water Code §§ 31091-31096 (duty of county water district to pay any "final judgment").

406/180

Government Code § 970.1 (added). Period of enforceability of judgment; limitation on means of enforcement

SEC. 18. Section 970.1 is added to the Government Code, to read:

970.1. (a) A judgment is enforceable until 10 years after the time the judgment becomes final or, if the judgment is payable in installments, until 10 years after the final installment becomes due.

(b) A judgment is not enforceable under Title 9 (commencing with Section 681) of Part 2 of the Code of Civil Procedure but is enforceable under this article.

Comment. Section 970.1 is a new provision that prescribes the time within which a money judgment against a local public entity is enforceable and the method of enforcement. See also Section 970(b) (defining "judgment").

Subdivision (a) is drawn from former Government Code Section 50175 and former Water Code Section 31096 and from Code of Civil Procedure Section 681. The 10-year period is drawn from Code of Civil Procedure Section 681. Subdivision (a)—not Code of Civil Procedure Sections 681 and 685—prescribes the period of enforceability of a money judgment against a local public entity. Where the judgment is payable in installments, the 10-year period does not run until the last installment becomes due. Thus, if a court order is obtained under Section 970.6 permitting the payment of the judgment in installments, the 10-year period commences to run when the last installment payment becomes due.

Subdivision (b) changes prior law to provide that execution and other remedies under the Code of Civil Procedure for enforcement of money judgments do not apply to enforcement of a money judgment against a local public entity. Such a judgment is payable under this article, and a writ of mandate is an appropriate remedy to compel payment. See Section 970.2. Under prior law, property of a local public entity was not subject to execution under the Code of Civil Procedure if the property was used or held for use for a public purpose. On the other hand,

property held by a local public entity merely as a proprietor, devoted to no use of a public character, such as land acquired or held for other than public purposes and not held in trust for public use, was subject to execution unless some statutory or constitutional provision forbid it. See *Marin Water & Power Co. v. Town of Sausalito*, 49 Cal. App. 78, 83, 193 P. 294, \_\_\_\_ (1920) (opinion of Supreme Court denying hearing and stating the governing rules). See also *C. J. Kubach Co. v. City of Long Beach*, 8 Cal. App.2d 567, 48 P.2d 181 (1935) (no execution against property of city held for public purposes); *United Taxpayers Co. v. City and County of San Francisco*, 202 Cal. 264, 259 P. 1101 (1927) (property of local public entity retains its public character notwithstanding temporary disuse).

406/174

Government Code § 970.4 (amended). Payment of judgment in fiscal year in which it becomes final

SEC. 19. Section 970.4 of the Government Code is amended to read:

970.4. The Except as provided in Section 970.6, the governing body of a local public entity shall pay, to the extent funds are available in the fiscal year in which it becomes final, any judgment, with interest thereon, out of any funds to the credit of the local public entity that are:

(a) Unappropriated for any other purpose unless the use of such funds is restricted by law or contract to other purposes; or

(b) Appropriated for the current fiscal year for the payment of judgments and not previously encumbered.

Comment. Section 970.4 is amended to add a reference to Section 970.6 (payment of judgment in installments). This addition makes clear that installment payments may be authorized under Section 970.6 as an alternative to paying the entire judgment in the fiscal year in which the judgment becomes final. A writ of mandate is an appropriate remedy to enforce the duty imposed by this section. See Section 970.2.

406/175

Government Code § 970.5 (added). Payment of judgment during ensuing fiscal year

SEC. 20. Section 970.5 is added to the Government Code, to read:

970.5. Except as provided in Section 970.6, if a local public entity does not pay a judgment, with interest thereon, during the fiscal year in which it becomes final, the governing body shall pay the

judgment, with interest thereon, during the ensuing fiscal year immediately upon the obtaining of sufficient funds for that purpose.

Comment. Section 970.5 continues a provision formerly found in Section 970.6. A writ of mandate is an appropriate remedy to enforce the duty imposed by this section. See Section 970.2. See also Section 970.8 (duty to include in budget a provision for payment).

406/176

Government Code § 970.6 (amended). Payment of judgment in installments

SEC. 21. Section 970.6 of the Government Code is amended to read:

970.6. (a) ~~Subject to subdivision (b), if a local public entity does not pay a judgment, with interest thereon, during the fiscal year in which it becomes final, the governing body shall pay the judgment, with interest thereon, during the ensuing fiscal year immediately upon the obtaining of sufficient funds for that purpose.~~

~~(b)~~ The court which enters the judgment shall order that the governing body pay the judgment, with interest thereon, in not exceeding 10 equal annual installments if both of the following conditions are satisfied:

(1) The governing body of the local public entity has adopted an ordinance or resolution finding that an unreasonable hardship will result unless the judgment is paid in installments.

(2) The court, after hearing, has found that payment of the judgment in installments as ordered by the court is necessary to avoid an unreasonable hardship.

~~(c)~~ (b) Each installment payment shall be of an equal amount, consisting of a portion of the principal of the judgment and the unpaid interest on the judgment to the date of the payment. The local public entity, in its discretion, may prepay any one or more installments or any part of an installment.

~~(d)~~ The authority to pay a judgment in installments as provided in this section is in addition to and not in lieu of any other law permitting local public entities to pay judgments in installments.

Comment. Subdivision (b) of Section 970.6 is amended to require that the installment payments be equal in amount. Accordingly, the amount of the principal paid in each installment will increase with each payment since the amount of accrued interest required to be included in each payment will decrease as the amount of the unpaid principal of the

judgment decreases. Formerly this section required payment of an equal amount of the principal of the judgment each year, together with the accrued interest. This requirement tended to defeat the purpose of the section since the installment payments required during the first few years of the 10-year period were substantially greater in amount than the payments required in the last few years. A writ of mandate is an appropriate remedy to enforce the duty imposed by an order under this section. See Section 970.2. Former subdivision (a) is continued in Section 970.5. Former subdivision (d) has been omitted as unnecessary in view of the repeal of the other provisions of former law which permitted local public entities to pay judgments in installments. See the Comment to Section 970.

In determining whether to order installment payments under this section, the court should consider all potential sources from which funds are available. For example, insurance may cover some or all of the public entity liability or the payment of the judgment in whole or in part may be passed on to the United States or some other entity under a grant, contract, or other arrangement. Section 970.6 is not intended to permit an insurance company or other source to minimize its obligation to make payment by permitting payment in installments.

406/182

Government Code § 970.8 (amended). Budgeting for payment of judgments

SEC. 22. Section 970.8 of the Government Code is amended to read:

970.8. (a) Each local public entity ~~that derives revenue for its maintenance and operation from taxes or assessments or from rates and charges made for services or facilities provided by the local public entity~~ shall in each fiscal year ~~levy taxes or assessments or make rates and charges or both, or otherwise~~ include in its budget a provision to provide funds ~~in an amount sufficient to pay all judgments in accordance with this article.~~

(b) If all or any portion of the revenue used for the maintenance and operation of a local public entity (other than an entity created by an agreement described in Section 895) liable for a judgment is derived from appropriations of another local public entity, such other local public entity shall in each fiscal year appropriate funds equal to its pro rata share of an amount sufficient to permit the local public entity liable for the judgment to pay the judgment in accordance with this article. Such amount shall be paid to the local public entity liable for the judgment and shall be used by such entity to satisfy the judgment. The pro rata share of such other local public entity for each

judgment is an amount bearing the same proportion to the total amount of the judgment as the revenue derived from such other local public entity for maintenance and operation during the fiscal year in which the cause of action on such judgment accrued bears to the total revenues used for maintenance and operation during such fiscal year of the local public entity liable for the judgment. For this purpose, such other local public entity shall ~~levy taxes or assessments, make rates and charges, or otherwise~~ include in its budget a provision to provide funds sufficient in amount to ~~raise the amount of~~ make the appropriation and payment required by this section.

Comment. Section 970.8 is revised to substitute a requirement that the budget include a provision to provide funds for the payment of all judgments in accordance with this article for the former requirement that the local public entity levy taxes or otherwise provide funds for such payment. This new requirement that the budget make provision for the payment of judgments is drawn from former Education Code Sections 35201 (school district) and 72501 (community college district). A writ of mandate is an appropriate remedy to enforce the duty imposed by this section that the local public entity budget for and pay all judgments in accordance with this article. See Section 970.2.

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Government Code § 971 (amended). Applicability of limitations on amount of taxes, assessments or rates and charges, amount of appropriations and payments, and amount of liability or indebtedness; court mandated costs

SEC. 23. Section 971 of the Government Code is amended to read:

971. (a) As used in this section:

(1) "Judgment resulting from a discretionary act" means a judgment arising from a liability which the local public entity has discretion to incur or not to incur and includes a judgment rendered in an eminent domain proceeding and a judgment requiring specific performance of a contractual obligation or awarding damages for failure to perform a contractual obligation.

(2) "Judgment resulting from a nondiscretionary act" means a judgment other than one described in paragraph (1) and includes a judgment founded upon tort or inverse condemnation liability.

(b) Any limitation on the amount of taxes, assessments or rates and charges that may be levied or collected by a local public entity, and



any limitation on the amount of appropriations and payments that may be made by a local public entity, and any limitation on the amount of liability or indebtedness that may be incurred by a local public entity, contained in any other statute or in any charter or ordinance ~~is~~ inapplicable :

(1) Applies to the taxes, assessments, rates and charges or appropriations levied, collected or made to pay pursuant to this article a judgment resulting from a discretionary act .

(2) Does not apply to the taxes, assessments, rates and charges or appropriations levied, collected or made to pay pursuant to this article a judgment resulting from a nondiscretionary act.

(c) For the purposes of Section 2271 of the Revenue and Taxation Code, taxes levied to pay pursuant to this article a judgment resulting from a nondiscretionary act are levied to pay costs mandated by the courts.

Comment. Section 971 is revised to reflect the expansion of Sections 970-971.2 to cover all money judgments. Revision of Section 971 is necessary because this article formerly covered only tort and inverse condemnation judgments. Formerly, Section 971 made tax and similar limitations inapplicable with respect to the payment of tort and inverse condemnation judgments; the revised section continues this rule for tort and inverse condemnation judgments and expands the rule to include other money judgments that result from a nondiscretionary act.

The standard used in subdivision (a)—which distinguishes between judgments that result from a discretionary act and those that do not—is drawn from cases interpreting constitutional limits on liabilities or indebtedness (see, e.g., *Martin v. Fisher*, 108 Cal. App. 34, 40-41, 291 P. 276, 278 (1930)) and from Section 2205 of the Revenue and Taxation Code. Section 971, however, merely makes inapplicable limitations contained in a statute, charter, or ordinance; the section does not affect the applicability of any constitutional limits.

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Government Code §§ 50170-50175 (repealed). Payment of judgments by cities and counties

SEC. 24. Article 7 (commencing with Section 50170) of Chapter 1 of Part 1 of Division 1 of Title 5 of the Government Code is repealed.

Comment. Sections 50170-50175 are superseded by the comprehensive statute relating to payment of money judgments against local public entities. See Sections 970-971.2.

Water Code §§ 31091-31096 (repealed). Payment of judgments by county water districts

SEC. 25. Section 31091 of the Water Code is repealed.

~~31091.~~ At least 15 days before a tax levy is made the county clerk shall file a list of all existing final judgments against the district with an auditor and the board.

Comment. Former Sections 31091-31096 are superseded by the comprehensive statute relating to the payment of money judgments by local public entities. See Gov't Code §§ 970-971.2.

SEC. 26. Section 31092 of the Water Code is repealed.

~~31092.~~ The auditor shall audit the judgments and certify the amount of the judgments to the board within five days after the list is filed with him. The board shall then include in the tax levy for the next fiscal year a rate sufficient to pay the judgments.

Comment. See the Comment to repealed Section 31091.

SEC. 27. Section 31093 of the Water Code is repealed.

~~31093.~~ Failure to include the amount of any existing final judgment in the tax levy for the year does not invalidate the tax levy, but the amount shall be included in the next tax levy.

Comment. See the Comment to repealed Section 31091.

SEC. 28. Section 31094 of the Water Code is repealed.

~~31094.~~ In lieu of levying a tax rate for the payment of all of the judgments in the next fiscal year, the board may provide for their payment by including in the tax levy for the next fiscal year at least 10 percent of the total amount of the judgment. The same percentage shall be levied each successive year until the whole is paid.

Comment. See the Comment to repealed Section 31091.

SEC. 29. Section 31095 of the Water Code is repealed.

~~31095. The auditor of the district shall pay the judgments. If the board has provided for payment by percentages in successive years, he shall pay to each judgment creditor the percentage of the judgment fixed by the board.~~

Comment. See the Comment to repealed Section 31091.

SEC. 30. Section 31096 of the Water Code is repealed.

~~31096. When provision for the payment of any final judgment is made by percentages in successive years, an action upon such judgment may be commenced within five years after the first tax levy which fails to include the percentage of the amount fixed by the board. An action shall not be brought or prosecuted on the judgment so long as it is being paid on such annual percentages.~~

Comment. See the Comment to repealed Section 31091.