

5/22/69

## Memorandum 69-71

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

Senate Bill 100 (claims statute) has been amended to make the amendments that were approved at the last meeting. The key amendment is one that would specify an additional ground for allowing presentation of late claims. Specifically, Section 911.6 of the Government Code would be amended to read:

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

(b) The board shall grant the application where:

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

(2) The person who sustained the alleged injury, damage, or loss failed to present the claim within the time specified in Section 911.2 because he did not have actual knowledge within such time of the requirement that a claim be presented, the public entity had actual notice within such time of the incident giving rise to the alleged injury, damage, or loss and that such incident caused injury, damage, or loss, and the public entity was not prejudiced by the failure to present the claim within such time; or

~~(2)~~ (3) The person who sustained the alleged injury, damage or loss was a minor during all of the time specified in Section 911.2 for the presentation of the claim; or

~~(3)~~ (4) The person who sustained the alleged injury, damage or loss was physically or mentally incapacitated during all of the time specified in Section 911.2 for the presentation of the claim and by reason of such disability failed to present a claim during such time; or

~~(4)~~ (5) The person who sustained the alleged injury, damage or loss died before the expiration of the time specified in Section 911.2 for the presentation of the claim.

At the hearing of the Assembly Judiciary Committee held on May 19, the Chairman directed that the bill be sent out to be reprinted with the amendments approved by the Commission at the last meeting. The bill is set for hearing again on May 26. The bill, even as amended, is opposed by the Attorney General, the Department of Public Works, and the League of California Cities because of the provisions relating to the presentation of late claims. The bill would not be opposed if it included only the provisions contained in the printed recommendation of the Commission.

The staff believes that the bill should be amended to delete all of the provisions relating to the presentation of claims. As so amended, the bill would be the same in substance as originally recommended by the Commission and would also contain four conforming amendments in the special district acts. We make this suggestion not because various public entities object to the bill but because we believe that enactment of the bill in its present form would not significantly improve the position of claimants and might operate to their detriment. The staff has been advised that a number of cities have included a provision in their insurance contract that the insurance company will not raise the technical defense of the claims statute on claims not presented in time where no prejudice resulted. In addition, one Palo Alto attorney has advised us that he routinely processes late claims in cases where the claimants did not know of the claims statute and has no difficulty in obtaining leave to present a late claim. I suspect that many trial judges would consider a failure to file because of lack of knowledge of the claims statute to be "excusable neglect" and would permit the filing of a late claim under the existing language of Section 911.6. If the amendment approved by the Commission were enacted

a new paragraph (2) would be added to the statute specifying very limited circumstances under which a late claim could be filed where the claimant lacked knowledge. This might be construed as a limitation on the broad language--"excusable neglect"--contained in paragraph (1).

Accordingly, without regard to what happens at the Assembly Judiciary Committee hearing on May 26, the staff recommends that the bill be amended so that it includes only those provisions originally recommended plus the four conforming changes in the special district laws. The minor technical amendments made to the provisions included in the bill as introduced should be retained. The staff further recommends that the Commission prepare a tentative recommendation for distribution for comment to interested persons. If the tentative recommendation could be approved for distribution after the June 26-28 meeting, it probably would be possible to submit the recommendation to the 1970 Legislature. We believe that there would be substantial support, even among various cities, for a more liberal provision than the one presently proposed to be added by the new paragraph added to Section 911.6.

There are several possible approaches that might be taken in preparing the new tentative recommendation:

(1) Probably the simplest approach would be to add a new subdivision to Section 911.6, reading in substance as follows:

(c) As used in this section and in Section 946.6, "excusable neglect" includes the failure to present a claim within the time specified in Section 911.2 because the person who sustained the alleged injury, damage, or loss did not have actual knowledge within such time of the requirement that a claim be presented.

(2) An alternative solution would be to add the phrase "or because of lack of knowledge of the requirement that a claim be presented" to existing paragraph (1) of Section 911.6 with a conforming change in 946.6.

(3) The requirement that a claim be presented within 100 days might be limited to claims arising out of dangerous conditions of public property. As an alternative, specific types of cases--such as cases involving operation of a vehicle by a public employee--might be excluded from the 100-day claims presentation requirement. In either case, the claims not required to be filed within 100 days should be presented not later than one year after accrual of the cause of action (the time specified in Section 911.2 for claims other than 100-day claims).

It would be helpful for the Commission to determine which approach is to be taken in preparing a tentative recommendation for the June 26-28 meeting if the Commission decides not to attempt to revise the law at the current session.

Respectfully submitted,

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Executive Secretary