

## Memorandum 74-9

Subject: Study 65.90 - Inverse Condemnation (Payment of Judgments)

In reviewing possible areas of inverse condemnation law that might profitably be considered by the Commission, the staff concluded that one area worthy of immediate consideration is payment of inverse condemnation judgments by local public entities. A staff draft of a tentative recommendation is attached. The draft explains the problem and proposed solution. Hence, we do not repeat that discussion here.

We are presenting the draft for your consideration with the view to sending it out for comment after the February meeting if it meets with your approval.

Respectfully submitted,

John H. DeMouly  
Executive Secretary

TENTATIVE

## RECOMMENDATION OF THE CALIFORNIA LAW REVISION COMMISSION

relating to

## INVERSE CONDEMNATION

Payment of Judgments Against Local Public Entities

In 1963, upon recommendation of the Law Revision Commission, the Legislature enacted comprehensive legislation dealing with the liability of public entities and public employees. The comprehensive legislation included provisions recommended by the Commission relating to the payment of tort judgments against local public entities. These provisions require that local public entities pay tort judgments against them and, at the same time, are designed to protect local public entities against the disruptive financial consequences of large tort judgments.<sup>1</sup>

Depending upon the financial condition of the local public entity, it can comply with the duty to pay a tort judgment<sup>2</sup> by (1) paying the judgment in the fiscal year in which it becomes final (Govt. Code § 970.4); (2) paying the judgment in the next fiscal year (Govt. Code § 970.6); (3) paying the judgment in not more than 10 annual

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1. See Recommendation Relating to Sovereign Immunity: Number 2--Claims, Actions and Judgments Against Public Entities and Public Employees, 4 Cal. L. Revision Comm'n Reports 1001, 1018 (1963).

2. Section 970.2 of the Government Code imposes a duty upon local public entities to pay tort judgments and gives the judgment creditor the right to obtain a writ of mandate to enforce this duty.

installments (Govt. Code § 970.8); or (4) paying the judgment with the proceeds of a bond issue as authorized by Sections 975-978.8 of the Government Code.<sup>3</sup>

Except for the provisions permitting payment of judgments with the proceeds of a bond issue, the provisions relating to payment of tort judgments are not applicable to judgments based on inverse condemnation liability. However, the expansion of the scope of inverse condemnation liability during recent years makes it imperative to provide local governmental entities with the means to minimize the disruptive effect of unexpectedly large judgments. Accordingly, the Commission recommends that Sections 970-971.2 be made clearly applicable to inverse condemnation judgments. This will make clear that local public entities have a duty to pay inverse condemnation judgments and will make applicable to such judgments the provisions relating to the manner of paying tort judgments, including the provision permitting the payment of such judgments in not more than 10 annual installments.<sup>4</sup>

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3. Statutory restrictions upon incurring debts or liabilities and statutory limitations upon the maximum permissible rate of property taxation by local public entities do not apply to tort judgments. Govt. Code § 971. A tort judgment against a local public entity is an authorized legal investment for trust funds, banks, and insurance companies to the same extent as the bonds of such local public entity. Govt. Code § 971.2.
  4. This authority will supplement the authority that already exists under Government Code Sections 975-978.8 to pay an inverse condemnation judgment with the proceeds of a bond issue. See also Govt. Code §§ 990, 11007.4 (insurance against tort and inverse condemnation liability).

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

An act to amend the heading for Chapter 2 (commencing with Section 970) of Part 5 of Division 3.6 of Title 1 of, and to amend Sections 970, 970.2, 970.4, 970.6, 970.8, and 971.2 of, the Government Code, relating to payment of judgments against local public entities.

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

Heading for Chapter 2 (commencing with Govt. Code § 970)(amended)

Section 1. The heading for Chapter 2 (commencing with Section 970) of part 5 of Division 3.6 of Title 1 of the Government Code is amended to read:

Chapter 2. Payment of ~~Tort~~ Judgments Against Local Public Entities

Comment. The heading for Chapter 2 is amended to delete "Tort" in recognition of the fact that Article 2 of the chapter applies to any judgment and Article 1 has been amended to include inverse condemnation judgments.

Government Code § 970 (amended)

Sec. 2. 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 against a local public entity which is founded upon tort or inverse condemnation liability.

(c) (b) "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.

~~(c) "Tort judgment" means a final judgment which is founded upon death or injury to person or property proximately caused by a negligent or wrongful act or omission and for which a local public entity is liable.~~

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Comment. Section 970 is amended to substitute a definition of "judgment" for the former definition of "tort judgment." The effect of this substitution is to make it clear that Chapter 1 (commencing with Section 970) applies to inverse condemnation judgments. See Recommendation Relating to Inverse Condemnation: Payment of Judgments Against Local Public Entities, 12 Cal. L. Revision Comm'n Reports 000 (1974). Cf. Govt. Code §§ 990, 11007.4 (insurance against tort and inverse condemnation liability).

Government Code § 970.2 (amended)

**Sec. 3.** Section 970.2 of the Government Code is amended to read:

970.2. A local public entity shall pay any ~~test~~ judgment in the manner provided in this article. A writ of mandate is an appropriate remedy to compel a local public entity to perform any act required by this article.

Comment. See Comment to Section 970.

Government Code § 970.4 (amended)

**Sec. 4.** Section 970.4 of the Government Code is amended to read:

970.4. 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 ~~test~~ judgment 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 ~~test~~ judgments and not previously encumbered.

Comment. See Comment to Section 970.

Government Code § 970.6 (amended)

**Sec. 5.** Section 970.6 of the Government Code is amended to read:

970.6. (a) If a local public entity does not pay a ~~test~~ judgment during the fiscal year in which it becomes final and if, in the opinion of the governing body, the unpaid amount of the ~~test~~ judgment is not too great to be paid out of revenues for the ensuing fiscal year, the governing body shall pay the judgment during the ensuing fiscal year immediately upon the obtaining of sufficient funds for that purpose.

(b) If a local public entity does not pay a ~~test~~ judgment during the fiscal year in which it becomes final and if, in the opinion of the governing body, the unpaid amount of the ~~test~~ judgment is so great that undue hardship will arise if the entire amount is paid out of the revenues for the ensuing fiscal year, the governing body shall pay the judgment, with interest thereon, in not exceeding 10 annual installments. Each payment shall be of an equal portion of the principal of the ~~test~~ judgment. The local public entity, in its discretion, may prepay any one or more installments or any part of an installment.

(c) The authority to pay a ~~test~~ 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 ~~test~~ judgments in installments.

Comment. See Comment to Section 970.

Government Code § 970.8 (amended)

**Sec. 6. 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 provide funds, in an amount sufficient to pay all ~~test~~ 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 ~~test~~ 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 ~~test~~ judgment to pay the judgment in accordance with this article. Such amount shall be paid to the local public entity liable for the ~~test~~ judgment and shall be used by such entity to satisfy the ~~test~~ judgment. The pro rata share of such other local public entity for each ~~test~~ judgment is an amount bearing the same proportion to the total amount of the ~~test~~ 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 ~~test~~ judgment. For this purpose, such other local public entity shall levy taxes or assessments, make rates and charges, or otherwise provide funds, sufficient in amount to raise the amount of the appropriation and payment required by this section.

Comment. See Comment to Section 970.

Government Code § 971.2 (amended)

**Sec. 7. Section 971.2 of the Government Code is amended to read:**

971.2. (a) All ~~test~~ judgments for which a local public entity is liable are legal investments for all trust funds, and for the funds of all insurance companies, banks (both commercial and savings) and trust companies, and for every other local public entity within this State, to the same extent as bonds of the local public entity liable for the ~~test~~ judgment.

(b) Whenever any money or funds may by law be invested in or loaned upon the security of bonds of a local public entity, such money or funds may be invested in or loaned upon the security of a ~~test~~ judgment for which such local public entity is liable; and whenever bonds of a local public entity may be used as security for the faithful performance or execution of any court or private trust or of any other act, a ~~test~~ judgment for which such local public entity is liable may be so used.

(c) All ~~test~~ judgments for which a local public entity is liable, to the same extent as bonds of such local public entity, are legal for use by any state or national bank or banks in the State as security for the deposit of funds of any local public entity within this State.

Comment. See Comment to Section 970.