

Date of Meeting: April 18-19, 1958.  
Date of Memo: April 16, 1958.

MEMORANDUM NO. 10 (SUPPLEMENT)

Subject: Study 37(L) - Claims Statute

Attached is a copy of the claims statute on which we have been working, as revised in accordance with the decisions taken at the March 1958 meeting of the Commission. Pursuant to instructions then given we have made the claims statute a part of a new Division (3.5) of Title 1 of the Government Code. The claims statute is made Chapter 1 of Division 3.5; Chapter 2 picks up the existing provisions of the Government Code (Sections 1980, 1981, 1982, and 2003) relating to the requirement of presenting a claim as a prerequisite to bringing an action against a public officer or employee. Thus Division 3.5 of Title 1 would bring together all of the sections (or at least the principle sections) of the Government Code relating to the presentment of claims. This change in the location of the new claims statute in the Government Code has required the several sections of the statute to be renumbered.

Section 2 of the proposed claim statute inserts a cross-reference in the Code of Civil Procedure to the claims presentation provisions of the Government Code. You will recall that at the March meeting we presented a

draft which made these cross-reference provisions a part of Title 14 of Part 2 of the Code of Civil Procedure, the sections being numbered 1062.5 and 1062.6 respectively. This proposal was not approved and the suggestion was made that the cross-reference should appear at some other and earlier point in Part 2 of the Code. One suggestion made was that since Section 342 of the Code of Civil Procedure would be repealed in conjunction with the enactment of the new claims statute, the cross-reference provision might be inserted at that point. However, this would place the cross-reference provision in Title 2 of Part 2 which relates solely to the time of commencing civil actions. This disposition does not appear to be a particularly logical one. We have, therefore, made the cross-reference provision a separate Title (1.1) of Part 2 of the Code of Civil Procedure.

With one exception the provisions of the new statute as set forth in the attached material are as approved by the Commission at prior meetings. The exception is that we have made a slight change in subsection (c) of Section 600 and have added a new subsection (i) to Section 600. These changes are shown in strike out and underline. The first is intended solely to make subsection (c) more readable; the reason for suggesting the addition of subsection (i) is set forth in my earlier memorandum relating to the claims statute.

On rereading Section 612 as set forth in the attached material it occurred to me that the following may express the thought somewhat more clearly and it is offered for your consideration:

612. The governing body may allow a claim in part and reject it in part and may require the claimant to accept the amount allowed in settlement of the entire claim as a condition to being paid the amount allowed. If no such requirement is made by the governing body in acting upon the claim, the claimant may bring an action on the part of the claim rejected. The right of the claimant to sue on the part of the claim rejected depends on the action taken by the governing body and not upon whether he executed and delivered a release of the entire claim in exchange for payment of the part of the claim allowed.

Date: April 16, 1958

CLAIMS STATUTE

An Act to add Division 3.5 to Title 1 of the Government Code and to add Title 1.1 to the Code of Civil Procedure relating to presentment of a claim as a prerequisite to a suit against a public entity or a public officer or employee.

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

SECTION 1. Division 3.5 is added to Title 1 of the Government Code, to read:

DIVISION 3.5

PRESENTMENT OF CLAIMS AS PREREQUISITE TO SUIT AGAINST  
PUBLIC ENTITY OR PUBLIC OFFICER OR EMPLOYEE

CHAPTER 1.

PRESENTMENT OF CLAIM AS PREREQUISITE TO SUIT AGAINST  
PUBLIC ENTITY

600. This chapter applies to claims against public entities except claims of the following kinds:

- a) Claims for exemption, cancellation or refund of taxes, fees and assessments.
- b) Claims in connection with which stop notices may be filed under statutes relating to mechanics' and materialmen's liens.
- c) Claims by public employees for wages, salaries, fees and reimbursement for of expenses of public-employees.
- d) Claims arising under workmen's compensation laws.
- e) Claims for aid under public assistance programs.
- f) Claims arising under any retirement or pension system.
- g) Claims for principal or interest upon bonded indebtedness.
- h) Claims governed by specific provisions relating to street or other public improvements.
- i) Claims made against a public entity by the State or a department or agency thereof or by another public entity.

601. This chapter shall be applicable only to causes of action which accrue subsequent to its effective date.

602. As used in this chapter "public entity" includes any county, city, city and county, district, authority, or other political subdivision of the State but does not include the State.

603. A claim presented on or before June 30, 1964, in substantial compliance with the requirements of any other applicable claims procedure established by or pursuant to statute, charter or ordinance in existence immediately prior to the effective date of this chapter shall be regarded as having been presented in compliance with the terms of this chapter.

604. By written agreement, compliance with the provisions of this chapter may be waived by a public entity with respect to any or all claims

arising out of an express contract between the parties to the waiver agreement.

605. Except as provided in this chapter, no suit may be brought for money or damages against a public entity until a written claim therefor has been presented to the public entity in conformity with the provisions of this chapter and has been rejected in whole or in part.

606. A claim shall be presented by the claimant or by a person acting on his behalf and shall show the name of the claimant and the residence or business address of the claimant or the person presenting the claim and shall contain a general statement of the following:

- a. The circumstances giving rise to the claim asserted.
- b. The nature and extent of the injury or damage incurred.
- c. The amount claimed.

607. If a claim as presented fails to comply with the requirements of Section 606 the governing body of the public entity may give the claimant or the person presenting the claim written notice of its insufficiency, stating with particularity in what respect the claim fails to comply with Section 606. Within ten days after receipt of the notice, the claimant or the person presenting the claim may present a corrected or amended claim which shall be considered a part of the original claim for all purposes. Unless notice of insufficiency is given, any defect or omission in the claim is waived except when the claim fails to give the residence or business address of the claimant or the person presenting the claim.

608. A claim may be presented to a public entity (1) by delivering the claim personally to the clerk or secretary thereof not later than the hundredth day after the cause of action to which the claim relates has

accrued within the meaning of the statute of limitations which would have been applicable to such a cause of action if the action had been brought against a defendant other than a public entity, or (2) by sending the claim to such clerk or secretary or to the governing body at the principal office of the public entity by mail postmarked not later than such hundredth day. A claim shall be deemed to have been presented in compliance with this section even though it is not delivered or mailed as provided herein if it is actually received by the clerk, secretary, or governing body within the time prescribed.

609. Where the claimant is a minor or is mentally or physically incapacitated and by reason of such disability fails to present a claim within the time allowed, or where a person entitled to present a claim dies before the expiration of the time allowed for presentation, the superior court of the county in which the public entity has its principal office may grant leave to present the claim after the expiration of the time allowed if the public entity against which the claim is made will not be unduly prejudiced thereby. Application for such leave must be made by petition, accompanied by an affidavit showing the reason for the delay and a copy of the proposed claim. Such petition shall be filed within a reasonable time, not to exceed one year, after the expiration of the time allowed for presentation. A copy of the petition, the affidavit, and the proposed claim shall be served on the clerk or secretary or governing body of the public entity.

610. A public entity shall be estopped from asserting as a defense to an action the insufficiency of a claim as to form or contents or as to time, place or method of presentation of the claim if the claimant or person presenting the claim on his behalf has reasonably and in good faith relied on

relied on any representation, express or implied, made by any officer, employee or agent of the entity, that a presentation of claim was unnecessary or that a claim had been presented in conformity with legal requirements.

611. If the governing body of the public entity fails or refuses to allow or reject a claim within eighty days after it has been presented, the claim shall be deemed to have been rejected on the eightieth day.

612. The governing body may allow a claim in part and reject it in part and may require the claimant to accept the amount allowed in settlement of the entire claim. If no such requirement is made the claimant may sue on the part of claim rejected.

613. An action on a claim must be commenced within nine months from the date of its presentation.

## CHAPTER 2

### PRESENTMENT OF CLAIM AS PREREQUISITE TO SUIT AGAINST PUBLIC OFFICER OR EMPLOYEE

700. As used in this chapter:

(a) "Person" includes any pupil attending the public schools of any school or high school district.

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

(c) "Officer" or "Officers" includes any deputy, assistant, agent



or employee of the State, a school district, county or municipality acting within the scope of his office, agency or employment.

701. Whenever it is claimed that any person has been injured or any property damaged as a result of the negligence or carelessness of any public officer or employee occurring during the course of his service or employment or as a result of the dangerous or defective condition of any public property, alleged to be due to the negligence or carelessness of any officer or employee, within 90 days after the accident has occurred a verified claim for damages shall be presented in writing and filed with the officer or employee and the clerk or secretary of the legislative body of the school district, county, or municipality, as the case may be. In the case of a State officer the claim shall be filed with the officer and the Governor.

702. The claim shall specify the name and address of the claimant, the date and place of the accident and the extent of the injuries or damages received.

703. A cause of action against an employee of a district, county, city, or city and county for damages resulting from any negligence upon the part of such employee while acting within the course and scope of such employment shall be barred unless a written claim for such damages has been presented to the employing district, county, city, or city and county in the manner and within the period prescribed by law as a condition to maintaining an action thereof against such governmental entity.

SECTION 2 Title 1.1 is added to Part 2 of the Code of Civil Procedure, to read:

TITLE 1.1

OF THE REQUIREMENT OF PRESENTMENT OF CLAIM AS  
PREREQUISITE TO SUIT AGAINST PUBLIC ENTITY OR  
PUBLIC OFFICER OR EMPLOYEE

§ 313. Presentment of claims against public entities is governed by Chapter 1 of Division 3.5 of Title 1 of the Government Code.

§ 314. Presentment to a public entity of a claim against an officer or employee thereof is governed by Chapter 2 of Division 3.5 of Title 1 of the Government Code.

MINUTES OF MEETING

NORTHERN SECTION

COMMITTEE ON ADMINISTRATION OF JUSTICE

FEBRUARY 19, 1958

A meeting of the Northern Section of the Committee on Administration of Justice was held on Wednesday, February 19, 1958 at 4:00 P. M. in the offices of the State Bar, 2100 Central Tower, San Francisco, California.

PRESENT: Arthur H. Connolly, Jr., Vice Chairman  
Brent M. Abel  
Forrest A. Cobb, Sr.  
H. Raymond Hall  
John B. Lounibos  
Courtney L. Moore  
Duncan Oneal  
Samuel H. Wagener

NOT PRESENT: Kenneth R. Malovos

ALSO PRESENT: Garrett H. Elmore  
Vernon M. Smith  
Karl E. Zellmann

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AGENDA NO.

1. Constitutional Amendment and Statute on Claims Procedure.

Mr. Lounibos reported on the Constitutional Amendment and the draft statute.

The Section considered the statute, section by section, and raised various questions about it on this preliminary consideration. Not all of the questions were resolved and it may be that there are valid answers to some of the criticisms pointed to the draft. The Section believed, nevertheless, that it was fruitful to put these questions in order that the Draftsman, or the Law Revision Commission, might have the benefit of the Section's initial thinking. Also, the comments may be resolved at a General Meeting. [It should be noted that the Section approached this examination without examining the Draftsman's extensive research study. Probably that study would answer some objections but the statute ought to stand on its own feet and generally should not require recourse to another source for the answer to major questions of application, meaning and interpretation.]

AS TO THE STATUTE:

Sec. 1. Are claims for unemployment benefits excluded. It appears to be the intent to exclude them but are they?

Sec. 5. It should be noted that a verified claim is not required, only a "written" claim. Section 14 picks up this omission and substitutes a misdemeanor charge for a wilful misstatement of any material fact in a claim

filed pursuant to section 5. The Section felt that it would be all right to modify the former technical verification requirement of appearing before a notary and permit verification "under penalty of perjury." It does not believe that a "written statement" without verification is sufficient, even though it be proposed to add the penal provisions of section 14. The claim should have solemnity, which can be accomplished by permitting either the usual verification or the "penalty of perjury" procedure of C. C. P. 2015.5. While most members felt that Section 2015.5 is sufficiently broad so that it would apply without express provision, technical defenses and questions should be eliminated in the drafting so far as possible. This point should be borne in mind. In substance, the action of the Section is for retention of "verification" requirements and deletion of section 14.

Sec. 6. This permits a waiver by written agreement, of the requirements of the statute in respect to claims arising out of express contracts. Presumably, although it is not spelled out, this may be done (1) in the first instance in the contract itself, or (2) after the claim has arisen. In either situation, may the waiver include new and different notice requirements? This would tend to defeat the aim of uniform procedures. Although it is doubtful that a public entity will prospectively waive any advantageous procedures, is it possible that an entity might, as a matter of course, insert some standard provision in its contracts which the other party will have to accept if he wants his bid accepted?

Who may waive? May this be done by an agent or any employee or only by the public entity's governing authority?

Sec. 7. There are ambiguities here. (1) The time within which a personal presentation must be made is not stated because the 90 day provision is tied only to the mailed notice (see first sentence). (2) Does the language "delivering the claim personally to the clerk" mean the claimant "personally" must deliver the claim or does it mean the claim must be delivered to the clerk, himself, personally? This is a narrow point but the language should be precise.

Also, the idea of "mailed postmarked" is somewhat awkward. It would mean that the envelope would have to be retained. What if the mark is illegible? Consideration should be given to the more usual provisions respecting mail notice.

Sec. 8. "Unduly prejudiced thereby" What is the standard? It is not clear. What kind of a motion and in what action - no action may yet have been filed; in such case how is the motion made.

This section appears to change the present law that gives no extension to the minor. Perhaps a better procedure, in the case of an infant, for example, would be to extend the time to file during the period of disability. There may be problems here though. The Section is inclined to favor the principle of extension of time for presenting a claim in cases of disability or minority. The problem is to find a fair solution

to both sides.

Sec. 9. First Alternative: What happens if claimant fails to file the amendment? Suppose there is a second insufficiency notice after amendment filed. What happens if no address is given. Is the notice insufficient in law by virtue of this section alone? On a demurrer?

Sec. 9. Second Alternative: The terms "mislead" and "misled" are too general and are subject to varying interpretation.

On Sec. 9, Both Alternatives. The Section tentatively thinks both are unnecessary and that they give rise to a kind of separate set of "pleadings", leading to difficulties and later technical defenses. We believe on balance, neither alternative should be included.

Sec. 10. "Responsible official, etc." is cloudy. What about a claims agent.

This matter is now covered by case law and this draft creates confusion.

Sec. 11. This section appears to prevent the public entity from making any payment after the 90th day and to compel suit in all cases of rejection. This would impose too great a rigidity in dealing with claims. The usual rule that the claimant may treat the claim as rejected, as his option, should be retained.

Sec. 12. How is the claimant to know when the public entity rejected the claim if no notice thereof is given? Suppose the claim is in severable parts; the second alternative would preclude allowance and/or rejection. There appears also to be a special short statute of limitations.

The Section questions the need for either alternative but could not agree upon which alternative, if one or the other should be included for uniformity. 4 members favor the "first alternative"; and 4 members on various grounds favor the "second alternative" (only if some provision is necessary to achieve uniformity).

It is the general feeling of most, if not all, that the principle of partial rejection would have little or no practical use in the case of tort claims and other claims usually litigated; it might have some use in the case of contract claims. Thus, the dispute may be over extras, or minor amounts.

There is objection on the part of some to supporting a procedure that would permit payments in tort cases to "finance" litigation; also a question is raised as to the effect of admission of liability by partial payment upon the public body's insurance coverage. Presumably, partial allowance would not be made in these cases, but existence of a statute permitting the procedure may lead to inadvertencies.

Sec. 13. The purpose of this section is approved. However, even with some explanation of the background, it is questioned whether the present wording is sufficiently clear? What is "within the scope"? Presumably the purpose is to keep in effect longer and

more liberal procedure, at least until specific repeals can be accomplished. But would it not be better to have a clear line after a certain date. Possibly the constitutional amendment could clarify this. Publicity could be given and the like. If, however, the alternative procedure is to be retained, we favor different wording of section 13.

Sec. 14. This section was necessary due to the fact that a "verified claim" was not required under section 5. However, we have previously suggested under section 5 that a verified claim be required. Therefore, section 14 should be eliminated.

Sec. 15. Under the present law, the claim must be presented to the employee, who may have quit his job and be unavailable. We favor the principle of this section which only requires the claim to be presented to the employing entity. It is to be recognized, however, that the provisions will probably encounter much opposition at the Legislature from employees' associations and others. Note: A 1955 State Bar bill to this effect was refused passage by the Judiciary Committee of the second house after several had opposed it. The bill had other features.

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In submitting the foregoing initial comments, the Section recognized the tremendous and able work done by the draftsman in this first draft, and the supporting study.

MINUTES OF MEETING

SOUTHERN SECTION

COMMITTEE ON ADMINISTRATION OF JUSTICE

MARCH 24, 1958

A meeting of the Southern Section of the Committee on Administration of Justice was held on Monday, March 24, 1958 at 4:00 P. M. in the offices of the State Bar of California, 458 South Spring Street, Los Angeles, California.

PRESENT: Lawrence L. Otis, Chairman  
C.H.B. Cox  
Gordon F. Hampton  
Marcus Mattson  
Samuel O. Pruitt, Jr.  
Eugene E. Sax

ALSO PRESENT: Alexander Macdonald, Advisor  
Norman S. Sterrry, Advisor  
Irving M. Walker, Advisor  
James B. Boyle, Board Liaison  
Graham L. Sterling, Jr., Board Liaison

NOT PRESENT: Edward C. Freutel, Jr.  
William P. Gray  
Herman F. Selvin

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Action was taken on the General Agenda as follows:

GENERAL AGENDA

Number

- 1 Constitutional amendment and statute on claims procedures.

The Section has had the benefit of a summary of the 200 page study of California Claims Statutes and also the recommendations of Messrs. Cox, Hampton, Sax and Otis on the proposed measures. After careful consideration the Section makes the following recommendations to the Law Revision Commission:

a) Constitutional amendment:

The Section recommends that the proposed constitutional amendment be amended to read as follows:

"The Legislature shall have power to prescribe by law procedures governing the presentation and consideration of claims against counties, cities and counties, cities, districts, authorities or other political subdivisions, including chartered counties, chartered cities and counties, and chartered cities and all officers, agents and employees thereof, Article XI hereof,

and any restrictions or limitations of any charter of any municipality to the contrary notwithstanding.  
(The underscored portions above are the suggested additions to the proposed Constitutional Amendment.)

(Note: These suggested changes, and those in Sections 3 and 4, infra, are dictated by our apprehension that, unless the point is made, in the clearest language, that chartered cities, counties, and cities and counties, are covered, the courts might ultimately hold that claims against such chartered cities, etc., are "municipal affairs" and not subject to legislative control.)

The Section makes the following recommendations with reference to the proposed statute:

SECTION 1: O.K. The question of the Northern Section seems to be covered by Section 2.

SECTION 2: O.K.

SECTION 3: Recommended that Section 3 be amended by the addition of the underlined words:

"This act shall be applicable only to claims which accrue subsequent to its effective date, and the presentation and consideration of such claims are hereby declared to be matters of statewide concern."

SECTION 4: Recommended that Section 4 be amended by the addition of the underlined words:

"Public entity" means a county, city, city and county, district, authority, or other political subdivision, whether chartered or not."

SECTION 5: The Section considered the requirement of verification undesirable, the object and purpose of the statute being simply to appraise the public body of the existence of the claim. The Section recommends that Section 5 be amended to read as follows:

"Except as limited by Section 1 hereof no suit may be brought against a public entity on any claim for money or damages upon which a legal action might be brought against such public entity until a written claim has been presented to the public entity in conformity with the provisions of this Act by the claimant or by any person in his behalf and has been rejected in whole or in part. A "claim" within the meaning of this Article must be in writing and must contain the name and address of the claimant and a statement of facts sufficient to give notice of the general nature and amount of the claim."

SECTION 6: The Section recommends deletion from this section of the last seven words, viz., ~~between the parties to the waiver agreement~~, believing the phrase to be unnecessary and confusing.

SECTION 7: The first sentence of this section should be amended to read as follows:

"A claim may be presented to a public entity only



by delivering the claim personally to the clerk or secretary within ninety days after the cause of action to which the claim relates has accrued or by sending the claim to such clerk or secretary, or to the governing body, by mail postmarked within such ninety days after the cause of action to which the claim relates has accrued."

SECTION 8: We recommend that this section be redrafted so that in the event of the disabilities therein specified the claimant or his representative should have 90 days after termination of the disability within which to file his claim but not exceeding one year from the date the cause of action arose.

SECTION 9: The Section prefers the second alternative amended to read as follows:

"No claim shall be held invalid or insufficient by reason of any inaccuracy or omission as to form or contents if it shall appear that ~~there was no intention to mislead and that~~ the public entity was ~~not in fact misled thereby~~ informed of the general nature of the claim."

SECTION 10: Approved as amended to read as follows:

"When a claim has been filed, the public entity shall be estopped from asserting the insufficiency of the claim as to form or contents, or as to time, place or method of presentation if the claimant or person presenting the claim in his behalf has reasonably and in good faith relied on any representation express or implied ~~that a claim was unnecessary or~~ that the claim had been presented in conformity with legal requirements, made by any responsible official, employee or agent of the public entity. ~~if it is shown that the public entity had actual notice of the essential facts upon which the claim is based within the time required for presentation of the claim.~~"

SECTION 11: Approved as amended to read as follows:

"If the governing body fails or refuses to allow or reject a claim for ninety days after it has been received by the clerk, secretary, or governing body, the claim shall be deemed to have been rejected ~~by final action of the governing body~~ on the ninetieth day."

SECTION 12: Prefer first alternative amended to read as follows:

"If a claim is allowed in part and rejected in part, the claimant may accept the amount allowed and sue for the balance. An action upon a claim rejected in whole or in part must be commenced within six months after ~~final action of the governing body~~ rejection."

SECTION 13: Recommended that this section be amended to read as follows:

"After the effective date of this act it shall be exclusively applicable to claims within its scope. ~~not governed by any other claims procedure. All other claims within the scope of this act shall also be governed by this act, but substantial compliance with the requirements of any other claims procedure made applicable by statute, charter, or ordinance shall be regarded as equivalent to compliance with the terms of this act.~~"

(Note: By the time the constitutional amendment and this act become effective it should be exclusive of all other claims procedures below state level.)

SECTION 14: The Section recommends that this section be deleted as already covered by and inconsistent with Penal Code Section 72.

SECTION 15: The Section recommends to the Law Revision Commission that it consider the problem of knowledge of claimant that employee is such and action within scope of employment.

GENERAL COMMENT: The Section suggest that 6 months rather than 90 days is preferable minimum period for filing claims.

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The meeting adjourned at 6:00 P. M., the next meeting to be held on Monday, March 31, 1958.