

Date of Meeting: May 16-17, 1958

Date of Memo: May 9, 1958

Memorandum No. 4

Subject: Study #37(L) Claims Statute

At the April meeting the Commission discussed in a preliminary way the problems which the staff had encountered in attempting to "dovetail" the proposed new claims statute into the existing pattern of laws relating to the filing of claims against public entities. It was concluded that the problem is one of such proportions that it cannot be handled by the staff and that we should attempt to persuade Professor Van Alstyne to undertake this phase of the work under a new contract with the Commission.

I am happy to be able to report that Professor Van Alstyne is willing to consider undertaking this assignment and that he will attend the meeting of the Commission on Saturday, May 17 to discuss the matter with us.

I enclose a copy of the memorandum on this matter which I sent you prior to the April meeting, the Appendix thereto, and the claims statute as it stood prior to the decisions taken at the April meeting in response to various suggestions made by the State Bar Committee on Administration of Justice. I think it might be helpful to have these materials before us when we talk to Professor Van Alstyne.

Respectfully submitted,

John R. McDonough, Jr.
Executive Secretary

JRM:imb

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.