Date of Meeting: July 18-19, 1958

Date of Memo: July 9, 1958

Memorandum No. 5

Subject: Study No. 37(L) - Claims Statute.

You will recall that we have retained Professor Van Alstyne to make a further study on this subject and to draft the legislative bills which will be necessary to enact a general claims statute and "dovetail" it to the existing pattern of claims statutes. I have received a letter and memorandum and a "Partial Proposed Draft of General Claims Statute With Explanatory Notes" from Professor Van Alstyne relating to the work which he has done to date and his present plan for going forward with this assignment. A copy of each of these is attached.

Because we have changed the date of our July meeting, Professor Van Alstyne will not be able to be with us. Before he can proceed with his work it will be necessary for the Commission to review the attached items so that we can advise Professor Van Alstyne whether the way in which he plans to proceed will be satisfactory to the Commission. My own view is that he is on the right track.

I enclose also a copy of the proposed general claims statute in the form in which it was last before the Commission and of a memorandum prepared for the April meeting. These may be helpful in refreshing your recollection with respect to the problems with which Professor Van Alstyne is concerned in his present assignment.

Respectfully submitted,

John R. McDonough, Jr.
Executive Secretary

UNIVERSITY OF CALIFORNIA

School of Law
Los Angeles 24, California

July 3, 1958

Mr. John R. McDonough
Law Revision Commission
Stanford, California

Dear John:

Enclosed is some material which I have gotten together in the hope that it might prove to be a useful basis for discussion of my current work on drafting of the claim statute, when I meet with the Commission on July 12 in Palo Alto.

I trust that this is in your hands sufficiently advance of the meeting so that it may be made available to the members of the Commission. Of course, I leave to you the decision whether it ought to be mimeographed or not.

The main questions I desire to have explored at the meeting are

(1) am I proceeding along the proper lines, so far as the Commission's basic policy determinations indicate? (In short, I am a little bit vague on exactly what I am to do under this latest contract - except to try to redraft the general claims statute and integrate it into existing law.)

(2) does the Commission agree that I should proceed in the future along the lines proposed in the enclosed progress report? (Some of these proposals constitute basic policy determinations, in the absence of which much of the work of integration would possibly prove to be fruitless.)

One of the fascinating aspects of the recent research which I have done on the project is that I have unearthed one or two new claims provisions which were inadvertently omitted from the original study (due chiefly to inadequate indexing of the codes); and have located literally scores of new claims provisions which were not within the scope of the original study, but which are now relevant since they relate to claims of the type which we propose to except from the general claims statute. I am sure our legislature has been the most prolific in the country on the subject of claims!

Kindest personal regards. I will be with you in Palo Alto (at Stanford Law School, I presume) on the morning of July 12.

Sincerely yours,

S/ Arvo
Arvo Van Alstyne

July 3, 1958

To: California Law Revision Commission

From: Professor Arvo Van Alstyne

Re: Progress Report on drafting of Claims Statute

The drafting study has taken the following lines. One of the chief difficulties previously encountered in trying to integrate the general claims statute to be proposed to the Legislature into existing law was one of coverage. Since the underlying policy was to attempt to make the law more uniform, it would be desirable to eliminate as many conflicting or duplicating provisions as possible. At the same time, the list of proposed exceptions to the new general claims statute demonstrated a recognition by the Commission that special procedures are sometimes fully justified with respect to particular types of claims. Finally, there seems to be general agreement that the most pressing need for more liberal and uniform claims procedures exists with respect to claims in tort (including inverse condemnation), and secondarily with respect to contract claims, for these two areas comprise nearly the entire mass of litigation over claims statutes.

If the foregoing paragraph correctly interprets the underlying policy considerations, two general approaches to the drafting problem seem to be suggested. First, to draft the new general claims statute as one applicable to all claims except those expressly excepted. This was the approach adopted in the previous drafts.

Second, to draft the new statute as one applicable only to designated types of claims, thereby excluding by implication all others.

I believe that the first approach is the more desirable one. It has the advantage of focussing the claimant's (or his attorney's) attention on the general claims statute as the starting point in every potential claims situation. A quick perusal of the express exceptions will either confirm that the general statute is applicable, or will direct attention to the statute law which is. (I believe it is safe to assume that, with respect to claims excepted from the general statute, the publishers of the codes will provide in their annotations reasonably adequate cross-references; and to some extent such cross-referencing may be written into the statute itself.) In addition, the second approach has the danger of inviting litigation as to whether particular claims are governed by the statute or not. Almost all of the existing claims statutes are of the second type - affirmatively applying only to designated types of claims; and considerable litigation has resulted therefrom. This is not to say that the second approach is not practicable or even that it may not be desirable. But it would appear to pose more drafting difficulties than the first approach in light of the fundamental policy considerations outlined above. It would appear to be easier to draft specific exceptions to a rule of general coverage where such exceptions are justified, than to define specifically the claims intended to be covered by language

comprehensive enough to embrace them all and yet to exclude those claims for which special procedures are justified by sound policy considerations.

Accordingly, I have attempted to redraft the sections of the general claims statute defining coverage, and to ascertain what policy considerations (and drafting consequences) support the proposed exceptions. The following general observations may be made at this time:

1. Most of the types of claims which are proposed to be excepted from the general claims statute are governed by specific statutory procedures. Few of them appear to fall within the general county claims statute (Govt. Code secs. 29700 et seq.). Thus, it would appear possible to redraft the county claims law in such a way as to make it applicable only to claims which are not governed by either the new general claims statute or by other express statutory procedures. Under this view, the only kinds of claims which (tentatively) appear necessary to continue to have covered by the general county claims provisions are:

(a) claims by officers and employees for wages, salaries, fees, mileage and other expenses (in a very few instances, these are covered by specific provisions not found within the 29700 et seq. series);

(b) claims for the value of aid or assistance furnished to any recipient under any public assistance

program, where not already covered by express provisions of the W. & I. Code or Regulations of the State Board of Social Welfare;

(c) claims against counties by other public entities, where not already covered by any express procedural provisions.

Each of these three categories of claims is excepted from the new general claims statute for reasons which are believed to be justifiable. It is deemed appropriate, therefore, that they be governed by special provisions applicable to counties. (Further study may suggest that there is no pressing need to include claims in class (c).)

It is proposed, therefore, to proceed next to attempt to redraft the county claims sections to conform with the foregoing views, and to make its procedural provisions more consistent with the new claims statute.

2. The previous drafts of the proposed general claims statute contain areas in which revision of language may be desirable to avoid ambiguities, or to more adequately carry out the basic purpose of the statute. Where I have encountered such problems, I have proceeded to recommend changes in language. Some of these matters may have been passed upon by the Commission, or its staff, at some previous time. In the belief that the Commission may wish to consider (or reconsider) such drafting

questions when identified, I propose to continue along the same lines, and to append to each section as drafted as note of explanation of the various points and how they were handled.

3. Once the basic issue of scope of coverage has been determined upon with finality, I believe the remaining task of integration with existing claims statutes should not prove to be of great difficulty. The county claims statute is the most complex one, and if its integration can be handled successfully, others should be relatively simple. In most instances, I propose to write into the existing law (e.g. into a given special district act) an express cross-reference to the new general claims statute, and to delete all special procedural requirements which may presently be found therein. In short, I propose to proceed on the assumption that the general claims statute represents a policy determination that any procedural requirements inconsistent with it (such as the frequently found requirement of verification) are undesirable and hence should be eliminated. Purely internal auditing and processing procedures, however, are regarded as beyond the scope of the new general act, and hence I propose not to disturb existing law with respect to such procedures except to the extent they trench on the policies which are implicit in the new general statute.

Van Alstyne - July 12, 1958

Partial Proposed Draft of General Claims

Statute With Explanatory Notes

600. This chapter applies to all claims for money or damages against public entities except:

a) Claims governed by the Revenue and Taxation Code.

b) Claims for refund, rebate, exemption, cancellation, amendment, modification or adjustment of any tax, assessment, fee or charge or any portion thereof, or of any penalties, costs or charges related thereto.

c) Claims in connection with which the filing of a notice of lien, statement of claim or stop notice is governed by --

Article 2 (commencing with Section 1190.1) of Chapter 2 of Title 4 of Part 3 of the Code of Civil Procedure,

Article 3 (commencing with Section 6570) of Chapter 2 of Part 5 of Division 8 of the Harbors and Navigation Code,

Article 5 (commencing with Section 5000) of Chapter 5 of Part 3 of Division 5 of the Health and Safety Code,

Chapter 12 (commencing with Section 5290) of Part 3 of Division 7 of the Streets and Highways Code,

Chapter 6 (commencing with Section 7210) of Part 3 of Division 8 of the Streets and Highways Code,

or any other provision of law relating to mechanics', laborers' or materialmen's liens.

d) Claims by public officers and employees for wages, salaries, fees,

mileage or other expenses and allowances.

e) Claims for which the workmen's compensation authorized by Division 4 of the Labor Code is the exclusive remedy.

f) Applications for any form of public assistance under the Welfare and Institutions Code or other provisions of law relating to public assistance programs, and claims for goods, services, provisions or other assistance rendered for or on behalf of any recipient of any form of public assistance.

g) Applications or claims for money or benefits under any public retirement or pension system.

h) Claims for principal or interest upon any bonds, notes, warrants, or other evidences of indebtedness.

i) Claims, petitions, objections, estimates of damages or protests required by law to be presented in the course of proceedings relating to (1) the determination of benefits, damages or assessments in connection with any public improvement project, or (2) the establishment or change of grade or of boundary line of any road, street or highway.

j) Claims which, either in whole or in part, are payable (1) from the proceeds of or by offset against a special assessment constituting a specific lien against the property assessed, or (2) from the proceeds, or by delivery to the claimant, of any warrant or bonds representing such assessment.

k) Claims against a public entity by the State or a department or agency thereof or by another public entity.

COMMENTS: Completely redrafted.

Introductory Sentence: It is recommended that the words "for money or damages" be added to the introductory language of the section. Since this section defines the general scope of the entire chapter, it seems advisable to make explicit the fact that the claims covered are only those which are against the public treasury of the entity concerned. It does not apply to claims for other forms of relief, such as performance or restraint against performance of a specific act other than the payment of money.

Subdivision (a): The Revenue And Taxation Code contains a number of provisions prescribing procedural requirements for filing of claims relating to taxes. The principal provisions relating to claims required to be filed with designated personnel of local governmental entities are:

R & T Code §§ 251-261 (claims for exemption from property taxes)
R & T Code §§ 5096 et seq. (claims for refund of erroneous property taxes)
R & T Code §§ 14361 et seq. (claims for refund of inheritance taxes)

(In addition the Revenue and Taxation Code contains a number of provisions governing claims for refund of state taxes, such as the insurance tax, motor vehicle fuel tax, personal income tax, and private car tax.)

It is believed that a blanket reference to the Revenue and Taxation Code is desirable for two reasons: First, in addition

to the provisions cited above, the Revenue and Taxation Code also contains provisions governing claims which might not be within the broad language of subdivision (b) (see below) of proposed section 600. For example, §§ 3720 et seq. govern claims of taxing agencies to a share of the delinquent tax sale trust fund; while §§ 3729 et seq. govern refunds of the purchase price of tax deeded land to the purchasers thereof if the sale is later found to be void or improper. Since claims governed by the last cited provisions, like those previously cited which relate to exemptions and refunds, are all geared to the special needs of administration of the tax laws, and have not given rise to the extensive litigation attending general claims in the fields of contracts and torts, their exclusion from the scope of the proposed act appears to be justified. Second, a blanket reference to the Revenue and Taxation Code will permit amendments to the claims procedures therein prescribed, as well as additions thereto, in the light of the specialized needs of tax administration, without the need for amendment of the general claims statute. Such amendment might otherwise be necessary if more explicit references to precise sections were to be made in the present subdivision.

Subdivision (b): The language of subdivision (b) has been drafted to cover as broadly as possible all forms of claims relating to all forms of governmental exactions. Although some of the kinds of claims thus referred to (e.g. claim for exemption from

taxes) might be held excluded in any event on the ground that it is not a claim for money or damages, it is believed advisable to make such exclusions explicit, thereby precluding unnecessary litigation. The basic purpose in excluding such claims from the scope of the general claims statute is substantially that expressed above in the discussion of subdivision (a). Since the timing and procedures for assessment, levy and collection of taxes and special assessments are strictly statutory, and in many cases sui generis, it is believed that procedures for attacking and securing relief from such taxes and assessments should be left to the specific statutory provisions governing them. The same rationale, it is believed, applies also to fees and charges (such as water charges by water districts, sewer connection fees by sanitation districts, charges for utility services by utility districts, etc.).

Where a particular tax, assessment or charge is delinquent, statutes frequently provide for the addition to the basic exaction of penalties, costs or charges. As a precaution, therefore, claims covering such additional penalties, costs or charges are also expressly included within the scope of the exception.

It should be noted that subdivision (b) and subdivision (a) do not completely overlap. As pointed out in the discussion of subdivision (a), supra, certain kinds of claims which are governed by the Revenue and Taxation Code are not covered by the broad language of subdivision (b). Similarly, many claims covered by the language

of subdivision (b) are not excluded by subdivision (a) since they are not governed by the Revenue and Taxation Code. For example, many forms of municipal license taxes and sales taxes, together with other forms of municipal fees and charges are governed by city charter or ordinance provisions, while some are governed by other codes. (See Govt. Code §§ 39584-39585, refund of weed abatement tax.) Some special district acts make explicit provision for the refund of excessive, erroneous or otherwise improper district taxes or assessments. (See Sts. & Hwys. Code § 3290, Street Opening Act of 1889; Sts. & Hwys. Code §§ 4440-4441, Street Opening Act of 1903; Sts. & Hwys. Code §§ 5561-5563, Improvement Act of 1911; Water Code §§ 26000-26002, irrigation districts; Water Code §§ 31965-31970, county water districts; Water Code § 51870, reclamation districts.) In addition, many special district statutes incorporate by reference the taxing procedures applicable to county taxes set forth in the Revenue and Taxation Code. (See e.g. Health and Safety Code §953, local health districts; Health and Safety Code § 2309, mosquito abatement districts; Health and Safety Code § 4127, garbage disposal districts; Health and Safety Code § 4811, county sanitation districts; Alameda County Flood Control and Water Conservation District Act, Stats. 1949 ch. 1275 p. 2240, as amended (Deering's General Laws, Act 205) § 18; Contra Costa County Water Agency Act, Stats. 1957, ch. 518, p. 1553 (Deering's General Laws, Act 1658) § 12; Orange County Water District Act, Stats. 1933, ch. 924 p. 2400 (Deering's General Laws, Act 5683)

§ 19.) Since these Revenue and Taxation Code provisions, as so incorporated, are regarded as part of the incorporating act (see Don v. Pfister, 172 Cal. 25, 155 Pac. 60 (1916)) they presumably would not be excluded from the general claims statute by subdivision (a) of Section 600, discussed above.

Subdivision (c): The wording of this subdivision has been expanded to make express cross-references to all statutory provisions which have been found containing express provisions for the filing of stop notices. Since these cross-referenced provisions may be amended by addition of new sections in the future, the cross-references are by Article, Chapter and Division, but with parenthetical reference to section numbers.

Attention is directed to the fact that none of the statutes use the common term "stop notice" in referring to the type of claim here involved. Accordingly, subdivision (c) uses the words "notice of lien" and "statement of claim", which are the usual statutory expressions, and couples them with the words "stop notice". In the light of the canon of noscitur a sociis, it is believed that this form of reference should preclude any possible litigation which might ensue from the mere use of the non-statutory nickname "stop notice".

The rationale for excluding "stop notices" from the general claims statute is self-evident. Such stop notices, and the procedures attendant upon them, are highly specialized and designed

to meet peculiar situations in connection with public construction contracts. The requirements of such statutes are to a very large extent unique and tailored to the peculiar problem with which they deal. They are regarded as entirely outside the scope and intent of the general claims statute.

Although the provisions to which cross-reference is made in subdivision (c) include all statutory provisions which have been found relating to stop notices, it is possible that additional provisions exist which have not been located in the codes and uncodified laws, or that some provisions relating thereto may exist in city charters or city ordinances adopted by home rule cities. The advisability of the "catch-all" clause at the end of the subdivision thus seems to be evident.

Subdivision (d): The exclusion from the general claims statute of claims by public officers and employees for wages, salaries and expenses is justified on the theory that such matters are normally handled by existing administrative procedures which appear to be operating without difficulty. Such claims are for the most part purely routine in nature and have not given rise to extensive litigation.

In addition to numerous ordinances and charter provisions, there are a substantial number of sections found in the Government Code which expressly authorize payment for meals, lodging, mileage, and other types of expenses which may be incurred by public per-

sonnel in the course of official duty. Some of these provisions are quite general in scope (e.g. Govt. Code § 25305, allowing "actual and necessary expenses" for county personnel travelling on county business; Govt. Code § 29610, convention expenses; Govt. Code § 29612, expenses of search and rescue; Govt. Code § 50080, expenses of attending training schools) while others are more specific (e.g. Govt. Code § 29404, expenses payable from district attorney's special fund; Govt. Code § 29436, expenses payable from sheriff's special fund). The special sections providing for compensation of public personnel in specific counties typically contain provisions governing reimbursable expenses, and some of these provisions include express procedures relating to the processing of claims to obtain reimbursement for such allowable expenses (e.g. Govt. Code § 28105, Contra Costa County; Govt. Code § 28109, Fresno County; Govt. Code § 28126, County of Butte; Govt. Code § 28127, County of Imperial; Govt. Code § 28150, County of Calaveras).

Except in the relatively few instances in which there are express statutory provisions regulating such procedure, it appears that the time, method and administrative handling of payment of salaries, wages, and reimbursable expenses is left by law to determination by the local governing board of the particular entity. (See Calif. Constitution, Article 11, §§ 7-1/2, 8, county and city charters; Govt. Code §§ 37201, 37202, 37206,

authorizing city councils of general law cities to prescribe procedure for handling demands and paying salaries and wages). Since the various local procedures adapted to the needs of different entities throughout the state seem to be functioning adequately with respect to claims of this type, no compelling justification appears to exist for including them within the present general claims statute.

In the wording of subdivision (d), it is deemed advisable to use the expression "officers and employees", in the light of the fact that many statutes and court decisions observe a distinction between the two classes of public personnel. Similarly it is deemed desirable to expand the coverage of the subdivision by adding to the general word "expenses" the words "mileage" and "allowances". Statutory provisions frequently distinguish between expenses and mileage, treating them as somewhat different in nature. In addition there are certain types of financial payments authorized to be made to public personnel which might not be considered as covered by the word "expenses", such as per diem living allowances, allowances for the cost of adequate insurance to employees operating their own automobiles on public business, etc. Accordingly, the word "allowances" is added for the sake of explicitness. Finally, it is deemed better to omit the use of the word "reimbursement" for the reason that with respect to most forms of expenses and allowances it is probably unnecessary, while for some types of

allowances it may be misleading since they may be payable in advance (e.g. allowance to pay insurance premiums on automobiles).

Subdivision (e): This subdivision makes express cross-reference to Division 4 of the Labor Code, which is the California Workmen's Compensation Act. The subdivision conforms to the language of § 3601 of the Labor Code, which provides, that when the conditions of compensation exist the workmen's compensation remedy given by the division is "the exclusive remedy", except to the extent provided in section 3706. Section 3706 authorizes an injured employee to sue the employer for damages as if the Workmen's Compensation Law did not apply in any case in which the employer had failed to secure the payment of compensation. The language formerly used, "claims arising under Workmen"s Compensation Laws", might have created an ambiguity, in that claims which could be prosecuted by ordinary civil actions under § 3706 might also have been included. The present wording, it is believed, excludes this possibility.

Subdivision (f): Two types of claims are excluded by this subdivision. First are claims by or on behalf of persons claiming to be eligible for assistance under Public Welfare programs. Such programs are governed by the Welfare Institutions Code, together with certain provisions of federal statutes and rules and regulations adopted by the State Board of Social Welfare. Second are claims by or on behalf of private individuals who have provided

goods or services or other forms of assistance to welfare recipients.

The Welfare and Institutions Code contains a number of provisions governing the procedure by which a person claiming to be eligible may apply for public assistance. (See Welf. & Inst. Code §§ 1550, needy children; 2180, aged persons; 2506, 2550, 2556, general indigent aid; 2840, applications under the Relief Law of 1945; 3081, needy blind; 3470, partially self-supporting blind residents; 4180, needy disabled; 4600, medical services to public assistance recipients.) Many of the cited provisions contain specific requirements with respect to the form and contents of the claims and prescribe other procedural steps which are specially adapted to the particular public assistance program in question.

The Welfare and Institutions Code, in practically every instance, uses the word "application" rather than the word "claim". Accordingly, this terminology has been carried over into the present subdivision. It appears desirable to exclude claims of this type from the coverage of the general claims statute, since the existing procedures, as supplemented by the rules and regulations of the State Board of Social Welfare, appear to be specially adapted to the needs of the individual public assistance programs. In addition, the Code contains special procedural provisions for prosecution of an administrative appeal to the State Board of Social Welfare by applicants for aid who are refused relief at the county level. (Welf. & Inst. Code, § 1041.1.) Existing practice in these

matters should not be disturbed.

The Welfare and Institutions Code also contains express authority for the Board of Supervisors of each county to enter into contracts to provide assistance to indigents. (See Welf. & Inst. Code, §§ 200, 202, 203, 206, 207.) Such contracts typically cover matters like provision for hospital and medical care, the boarding out of dependent minor children, the honoring of meal tickets and requisitions for clothing and other commodities. In so far as claims arising under contracts of this type are presented to the various counties, they would appear to be appropriately governed by the general county claims statute (Govt. Code §§ 29700 et seq.). To the extent that such claims are required to be filed with the State Department of Social Welfare (see Welf. & Inst. Code §§ 1556.5, 1557), they will also be excluded by the provisions of subdivision (k) below. Since public assistance programs are administered only at the state and county levels, it follows that the claims which are thus excluded will be adequately covered by other claims provisions.

Subdivision (g): Applications and claims arising under public pension and retirement systems should be excluded from the scope of the general claims statute, since such matters are adequately covered by existing statute law or by rules and regulations of retirement boards made pursuant to statutory authority; and the form, contents, and other procedural requirements with respect to

such claims are closely related to the substantive and administrative provisions regulating such public retirement systems.

The wording of this subdivision is believed to adequately cover the types of applications and claims which should be excluded. The phrase "applications or claims" is believed to be preferable to the single word "claims". Most of the statute law which provides for retirement systems uses the word "application" rather than the word "claim". (See Govt. Code, §§ 31672, 31721, 31741, County Employees Retirement Law; Govt. Code §§ 20950-20954, State Employees Retirement System, Educ. Code § 14601, State Teachers Retirement System.) In other instances, claims for retirement benefits are described in statutory language as "requests" (Govt. Code § 50872, Police and Firemens Pension System Law), while in other instances the law merely requires evidence in the form of affidavits or other proof to be submitted showing eligibility for the particular benefit (Govt. Code §§ 14575, 14663-14665, 21370). In some cases, the statutes authorizing the creation of a retirement system do not make express provision for the procedure which must be followed to secure benefits, but instead authorize the governing board of the system to provide by rule or regulation for the terms and conditions upon which benefits will be payable (Govt. Code § 45309, City Employees Retirement System; Educ. Code §§ 14732 and 14781, School District Employees Retirement System). It is believed that the words "applications or claims" as used

in the present draft adequately cover all forms of documentary demands which may be found in the law governing any retirement system.

The present subdivision also uses the phrase "money or other benefits". To merely refer to claims for "benefits" would not be adequate, since many of the retirement statutes authorize the filing of claims for moneys payable which are probably not within the classification of "benefits". Benefits normally would be considered as pecuniary advantages flowing from the system to its members or members of their family or other designated beneficiaries. However, retirement laws frequently authorize a third party, such as a funeral director, to file a claim with the retirement board for payment of funeral expenses out of the moneys which otherwise would be payable as benefits to the beneficiaries (Govt. Code §§ 14665, 21370, 31783, 31793). On the other hand, to merely refer to claims for "money" as being the types of claims which are excepted from the general claims statute, might suggest that applications or claims for other benefits, which have a financial aspect to them but which are not direct claims for money, must comply with the general claims statute. For example, written applications frequently are required from beneficiaries who desire to make an election of optional modes of distribution of benefits available; members are frequently required to make written election to leave accumulated contributions in the retirement fund on

separation from service prior to retirement; written applications for reinstatement after retirement are often demanded; and written applications for retroactive coverage or allowance for prior service on payment of required sums proportionate thereto are typically found in such statutes. In order to avoid doubts as to whether these types of claims are excluded by the present subdivision (g), it is believed that the broader language here recommended should be used.

Subdivision (h): Only one Code provision has been found which expressly provides that principal and interest due upon bonded indebtedness is payable without presentation of a formal claim. (See Govt. Code § 50663, relating to city or county negotiable revenue or special fund bonds.) Such provision, however, appears to be only a statement of existing law in any event. All of the statutes authorizing the issuance of bonds of any type (either general obligation, special fund, or revenue bonds) seem to uniformly contemplate or expressly provide that payment of principal and interest shall be made in accordance with the method prescribed in the resolution authorizing the bonds or, in the case of revenue bonds, in the indenture agreement pursuant to which the bonds are issued. (See Govt. Code §§ 43617-43619, Municipal General Obligation Bonds; 50717-50719, Revenue Bonds; 54402 and 54512, Sanitation, Sewer and Water Revenue Bond Law of 1941; 61671, 61732, and 61737.05, Community Services District Bonds.)

No strong or compelling reason appears to exist for altering

the existing practices with respect to payment or principal and interest upon bonded indebtedness, by requiring such claims to be covered by the general claims statute. The same rationale would seem to justify also the exclusion of other somewhat similar documentary evidences of indebtedness, such as short term notes, tax anticipation notes, warrants, certificates of indebtedness, or any other similar documents. The use of the phrase "notes, warrants, or other evidences of indebtedness" is advisable in view of the fact that although long term indebtedness of public entities is almost invariably represented by bonds, short term indebtedness may take a number of different forms. Occasionally, short term indebtedness may be represented by notes (see Govt. Code §§ 53829-53830, tax anticipation notes; Water Code § 31304, short term negotiable notes of County Water Districts). In other circumstances, warrants may be used to represent short term borrowings. (See Govt. Code §§ 29870-29878, county warrants for indigent aid; Water Code § 31301, short term loans by County Water Districts; Water Code §§ 36400-36408, short term loans by California Water Districts; Water Code §§ 53040-53049, short term borrowings by reclamation districts.) Still other statutes authorize public entities to incur indebtedness without imposing any specific requirements with respect to the form which the evidence thereof must take. (See Water Code § 24251, authorizing incurrence of indebtedness for formation expenses of irrigation districts; Water Code § 31300, authorizing

county water districts to borrow and issue "bonds or other evidences of the indebtedness".) In addition, section 53822 of the Government Code authorizes several types of local agencies to borrow money "on notes, tax anticipation warrants or other evidences of indebtedness". It is believed that the reasons for excluding payments of principal and interest on bonded indebtedness are clearly applicable to these other forms of evidences of indebtedness.

Subdivision (i): The present subdivision is recommended in lieu of the language in the previous draft which would have excluded from the general claims statute "claims governed by specific provisions relating to street or other public improvements". The quoted language was unsatisfactory for two reasons.

First, it was so broadly worded that it might be construed to exclude claims which are not intended to be excluded. For example, a liberal interpretation of the quoted language might even suggest that claims based upon a dangerous or defective condition of public property (Govt. Code § 53051) were excluded, at least where the particular defective condition arose in the course of a public improvement project. In addition, the broad language previously employed would appear to exclude from the scope of the act a number of types of claims in contract or inverse condemnation, in view of the fact that there are many statutes making express provision for contract procedures and eminent domain proceedings in the context of public improvement projects.

Secondly, even if the previous language were to be given a narrow interpretation so that it applied only to express claims procedures in statutes relating to street and other public improvement proceedings, the blanket exclusion thereof would be unduly broad. Some statutes providing for such claims procedures make the presentation of a claim merely permissive, and not mandatory, imposing no sanction upon the failure to present a claim. (See e.g. Sts. & Hwys, Code § 6040, change of grade proceeding under Improvement Act of 1911). Such merely permissive claims proceedings would have been excluded by the previous wording of the subdivision, as well as claims proceedings which are mandatory and which might be an acceptable alternative to the general claims procedures to be established by the draft statute.

Justification for excluding claims of the types here discussed is found in the fact that numerous statutes make express provision for the presentation of such claims in the course of public improvement proceedings, and such explicitly required procedures normally are integrated into the general improvement proceeding in such a way as to justify special treatment. A search of the statutes reveals four general categories of such explicit claims procedures. The first are the statutory provisions relating to stop notices. These types of claims are already excluded by subdivision (c) of the present statute. The other three types are:

(1) Claims or estimates of damages which the claimant believes

will result from a proposed improvement, which claims or estimates are required to be presented in appraisal proceedings prior to the commencement of the work, and are usually waived unless presented. (See Sts. & Hwys. Code §§ 7174-7176, Street Improvement Act of 1913; Sts. & Hwys. Code §§ 3266-3267, Street Opening Act of 1889; Water Code § 56053, County Drainage Act; Drainage District Improvement Act of 1919, Stats. 1919 ch. 454, p. 731, as amended (Deering's General Laws, Act 2203) §§ 4.3-4.4; Formation of Levy Districts and Erection of Protection Works Act, Stats. 1905, ch. 310, p. 327, as amended (Deering's General Laws, Act 4284) § 4; Protection District Act of 1880, ch. 63, p. 55, as amended (Deering's General Laws, Act 6172) § 6; Protection District Act of 1895, Stats. 1895, ch. 201 p. 247 (Deering's General Laws, Act 6174) § 16; Storm Water District Act of 1909, Stats. 1909, ch. 222, p. 339 (Deering's General Laws, Act 6176 § 15).

(2) Protests and objections which are required to be filed by property owners in the course of proceedings after the completion of the public improvement project, which proceedings are for the purpose of spreading, equalizing and confirming the special assessments which are levied for the purpose of paying for the project. (See Sts. & Hwys. Code § 5366, Improvement Act of 1911; Sts. & Hwys. Code § 7236, Street Improvement Act of 1913; Sts. & Hwys. Code § 10310, Municipal Improvement Act

of 1913.)

(3) Claims for damages required to be presented in response to published notice of intention to establish or to change the grade of a street, road or highway, proceedings for which are sometimes part of a special assessment project (e.g. Sts. & Hwys. Code § 5152, Improvement Act of 1911) and sometimes are independent of any such project (see Sts. & Hwys. Code § 856, proposed change of grade by State Highway Commission; Sts. & Hwys. Code § 867, proposal of Dept. of Public Works to establish boundary line of state highway). In addition to the foregoing statutory procedures there are undoubtedly ordinances and possibly some municipal charter provisions establishing somewhat similar procedures within specific cities.

The present subdivision, it is believed, is drafted with sufficiently comprehensive language to exclude from the scope of the general claims statute all of the cited provisions in which the presentation of a claim or other form of objection in public improvement proceedings or a change of grade proceedings is mandatory (i.e. "required by law to be presented"). At the same time, the subdivision is drafted narrowly enough so that it is restricted to the types of claims covered by the cited statutes, and therefore does not exclude such claims, related to public improvement projects, as personal injury or property damage claims arising out of dangerous or defective

conditions of the property embraced by the project. Since the various statutes refer to the types of claims referred to in this subdivision by such varying designations as "petitions", "objections", "estimates of damages", and "protests", it is believed advisable that all of these forms of terminology be employed in the subdivision to avoid any doubts as to the scope of its coverage.

Subdivision (j): The financing of construction or maintenance of public improvements is frequently done by means of special assessments. Where the special assessments are in the form of ad valorem "special assessment taxes" (e.g. flood control district assessments, see Cedars of Lebanon Hospital v. County of Los Angeles, 35 Cal. 2d 729 (1950); Municipal Lighting District assessments, Sts. & Hwys. Code §§ 18730-18732; Highway Lighting District assessments, Sts. & Hwys. Code § 19181), no special problems arise with respect to the payment of claims from the proceeds of the assessment which would distinguish such claims, with respect to the procedure for presentation thereof, from any other claims payable out of general taxes. Under many statutes, however, the improvement or maintenance costs are payable out of special assessments which constitute a specific lien against the land assessed.

The payment of claims in proceedings of the latter type frequently requires a specialized procedure. For example, some of the statutes of this type authorize the payment of claims

only when "sufficient money" has been paid upon the assessments, or when in the discretion of the board conducting the proceedings "the time has come to make payments". (See Sts. & Hwys. Code §§ 3310-3312, Street Opening Act of 1889; § 4371, Street Opening Act of 1903; § 7294-7295, Street Improvement Act of 1913; §§ 22200-22201, Tree Planting Act of 1931.) Other statutes authorize payment of costs of construction by delivery to the contractor of a warrant which authorizes the contractor to collect the assessment (Sts. & Hwys. Code § 5374, Improvement Act of 1911); or authorize the delivery to the contractor or his assignee (Sts. & Hwys. Code § 6422, Improvement Act of 1911) or for the purposes of public sale (see Sts. & Hwys. Code §§ 8500-8851, Improvement Bond Act of 1915) of improvement bonds secured by the assessment lien. Finally, some of the statutes authorize an owner of property to offset the assessment against his property by the amount of damages to which he is entitled (e.g. Sts. & Hwys. Code §§ 4300-4302, Street Improvement Act of 1903). The need for integrating claims payments procedures with financing procedures under statutes of this kind clearly justify exclusion of such claims from the general claims statute.

The words "in whole or in part" are used in the subdivision in recognition of the fact that many of the special assessment statutes authorize part of the cost of the project to be paid directly out of the city treasury rather than from special

assessments.

Subdivision (k): This subdivision is substantially the same as subdivision (i) of the previous draft. It is believed unnecessary to include within the scope of the general claims statute claims against public entities by the state, or claims between public entities inter se. Such claims seldom result in litigation, and, by and large, appear to be administered without undue difficulty at the present time.

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

COMMENTS: This section is identical with section 601 of the previous draft, with the addition of the words "relating to causes of action". Strictly speaking, the chapter relates to the claims, and not to the causes of action.

The section has been renumbered as section 600.5. It is recommended that this provision be not codified as part of the general claims statute, for it is merely a temporary provision at best. The current practice of the Legislative Counsel is to place such provisions in a separate section of the legislative draft following the new code sections, but not to codify it. The publishers of the codes normally draw attention to such non-retroactivity provisions by means of notes appended to the new code sections. However, if the Commission feels it best to

leave the provision where it now stands, it seems desirable to number it as 600.5, so that several years from now, when it is repealed as no longer necessary, the repeal will not leave a gap in the section numbering.

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

COMMENTS: Same as section 602 of the previous draft, with the addition of the word "agency". There are a number of local entities bearing the statutory designation of "agency" rather than "district" or "authority". See: Sacramento County Water Agency Act, Stats. 1st Ex. Sess. 1952, ch. 10, p. 315, Deering's Gen. Laws Act 6730a; Santa Barbara County Water Agency Act, Stats. 1945, ch. 1501, p. 2780, Deering's Gen. Laws Act 7303; Shasta County Water Agency Act, Stats. 1957, ch. 1512, p. 2844, Deering's Gen. Laws Act 7580.

602. 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, and sections (609) and (610) of this chapter are applicable thereto.

COMMENTS: Based on section 603 of the previous draft, with the addition of the underscored words. The section numbers

to be inserted in the blanks are to correspond with sections 609 and 610 of the former draft. Section 609 provides for extensions of time in cases of minority, disability or death. Section 610 codifies the doctrine of estoppel of the entity to rely on a defense of noncompliance with the claim statute. Thus, a minor or incompetent whose claim was filed too late but otherwise in substantial compliance with some other claims requirement (e.g. a city charter) could secure an extension of time under section 609, although late filing would completely bar relief if section 609 were not expressly made applicable thereto. For similar reasons, section 610 should also be made applicable to such claims.

603. The governing body of a public entity may authorize the inclusion in any written agreement to which the entity, its governing body, or any board or officer thereof in an official capacity is a party, of provisions governing the presentation, consideration or payment of any or all claims arising out of or related to the agreement by or on behalf of any party thereto. A claims procedure established by agreement pursuant to this section exclusively governs the claims to which it relates, except that the agreement may not require a shorter time for presentation of any claim than the time provided in section (608), and sections (609) and (610) are applicable to all claims thereunder.

COMMENTS: This provision is entirely new, and is recommended to supplant former section 604, which authorized entities to

waive compliance with the chapter by written agreement.

It is believed desirable to express in some detail the scope of the provisions which may be agreed upon by contract to govern claims thereunder. Where the previous language merely authorized a waiver, the present draft affirmatively authorizes substitute procedural provisions to be inserted into written agreements. The present wording is thus more specific, and is more closely in accord with the authority already conferred upon governing boards to contract with respect to the method of payment. (See, e.g. Govt. Code sec. 25464, authorizing "method of payment...including progress payments" to be determined by board of supervisors; Govt. Code sec. 51701, joint construction of public buildings; Govt. Code 54807, contracts for sanitation or sewerage enterprises; Municipal Water District Act of 1911, Stats. 1911, ch. 671, p. 1290 as amended (Deering's Gen. Laws, Act 5243) sec. 13(7), general improvement contracts of municipal water districts.)

The wording here recommended is limited to claims "arising out of or related to" the agreement. It appears both desirable and appropriate that it should also be limited to claims by or on behalf of a party to the agreement. Thus, claims by third parties, such as persons injured by the performance of the work or the condition of the property, would not be within the scope of the exception.

In order to avoid confusion, the contractual claims procedure

is made exclusive. It is regarded as unlikely that this exclusivity will create a "trap" for any claimant, for it should be presumed that the parties to an agreement ordinarily look to its terms to ascertain their rights. The "traps for the unwary" which are sometimes created by the diversity of the claims statutes result chiefly from lack of notice of the statutory requirements. Where the claims procedure is incorporated in a contract, notice is clearly present, as far as the parties thereto are concerned.

For the sake of uniformity of principle, and to preclude the insertion into contracts of unduly restrictive claims provisions, the subdivision requires a filing period no shorter than that required by the general claims statute; and makes the provisions for an extension of time in cases of disability and for application of estoppel applicable to claims under the contractual provisions.