3/9/62

Memorandum No. 12(1962)

Subject: Study No. 52(L) - Sovereign Immunity (dangerous Conditions of Public Property)

Attached to this memorandum as Exhibit I (gold pages) is a Draft Statute relating to Liability for Dangerous Conditions of Public Property. The Draft Statute will be a part of a Tentative Recommendation on this subject. We will send you the text of the Tentative Recommendation prior to the March meeting. We suggest that at the March meeting we first discuss the attached Draft Statute which will be a part of the Tentative Recommendation and then the text (to be sent) of the Tentative Recommendation. We are hopeful that we can make any necessary revisions of the Tentative Recommendation at the March meeting and distribute it after the March meeting to interested persons for comments and criticisms.

COMMENTS CONCERNING DRAFT STATUTE

SECTION 1 (INTRODUCTORY CLAUSE)

It is tentatively proposed that the various statutory provisions relating to substantive liability of public entities be compiled in a new chapter to become a part of Division 3.5 of Title 1 of the Government Code. Division 3.5 is titled "Claims Against the State, Local Public Entities and Officers and Employees." The Division now consists of three chapters:

Chapter 1. Claims Against the State.

Chapter 2. Claims Against Local Public Entities.

Chapter 3. Presentation of Claim as Prerequisite to Suit Against Public Officer or Employee.

Chapter 4, the proposed new chapter, would be titled "Liability of Public Entities, Officers and Employees." We believe that Article 1 of the new chapter should be reserved for provisions of a general nature--definitions, general provisions relating to liability, etc. Article 2 would contain the proposed legislation relating to liability for dangerous conditions of public property. Article 3 might contain legislation relating to liability for medical treatment and hospital care. Subsequent articles would contain legislation relating to other areas of liability.

The above scheme is tentative. We have adopted it now so that we may designate proposed legislation by section number. This permits convenience of reference. We will, no doubt, have to revise the section numbers of the proposed legislation relating to dangerous conditions of public property when we have completed all of the proposed legislation for the 1963 Legislative Session.

SECTION 901.1

This section is intended to make clear that the proposed legislation governs liability for dangerous conditions of public property in all cases. Under present law (disregarding the Muskopf case), liability for dangerous conditions of public property where the function is "governmental" ordinarily must be founded on the Public Liability Act (Section 53051 of the Government Code) or there is no liability. Liability where the function is "proprietary", however, may be based: (1) in the case of

public entities other than cities, counties and school districts, on common law liability of occupiers of land (with its technical distinctions between trespassers, licensees and invitees, etc.) or (2) in the case of counties, cities and school districts, either on the Public Liability Act or on common law liability. Section 901.1 provides in effect that liability can be based only upon the proposed legislation, not upon the common law liability of occupiers of land. The primary reason for proposed Section 901.1 is to make it clear that there will be only one standard of liability--the standard established by the proposed legislation.

The enactment of one standard of liability for both governmental and proprietary activities will not necessarily curtail the existing proprietary liability:

First, as pointed out in the study, under existing law a public entity may at times be liable as an occupier of land for injuries suffered on property maintained in a proprietary capacity where it would not be liable under the Public Liability Act. Part of this more extensive liability is for "active negligence" or for "wilful or intentional injury" (see Study Note 212). The Public Liability Act and the statute proposed here do not purport to deal with this aspect of an occupier's liability; they deal only with liabilities arising out of the condition of the property.

Second, the remainder of the "proprietary" liability not covered by the existing Public Liability Act, while based on the dangerous condition of the property, arises out of a difference in the "notice"

requirements. The Public Liability Act requires the governing body of the entity or a "person authorized to remedy the condition" to have notice of the condition for liability to be imposed. Private proprietors can acquire notice under the ordinary common law standards of imputed notice. (See Study p. 46 and notes 181 and 212.)

Thus, whether the adoption of one standard of liability for both governmental and proprietary functions will curtail existing "proprietary" liability for injuries arising out of the condition of public property will depend on whether the existing requirement of the Public Liability Act that the governing body or a "person authorized to remedy the condition" have notice is retained or whether the normal imputed notice rules of the common law are substituted for this requirement. The proposed statute would substitute normal imputed notice rules of the common law for the more limited notice provision of the Public Liability Act.

Elimination of the "governmental-proprietary" distinction here will achieve one of the legislative goals recommended by the consultant. (Study p. 376.)

SECTION 901.2

Definition of "dangerous condition." At the February 1962 meeting the Commission considered two phrases that might be used in the definition of "dangerous condition": (1) "likely to cause injury to persons or property" and (2) "exposes persons or property to a substantial risk of injury." Concern was expressed that the meaning of neither phrase is clear. The staff was requested to give further consideration to this

matter and to report to the Commission.

The cases are not helpful in determining the meaning of the two phrases quoted above. The context in which each phrase is used will determine its meaning, and no case has been found where either phrase was used in a context similar to Section 901.2.

Although there are a number of cases that consider the meaning of the word "substantial" as used in various other contexts,[1] no case has been found construing the phrase "substantial risk." Two California cases suggest that the word "likely" is synonymous with the word "probable."[2]

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1. "Substantial is a relative term, not an exact one; its measure is to be gauged by all the circumstances surrounding the matter in reference to which the expression has been used." Atchison etc. Ry. Co. v. Kings Co. Water Dist., 47 Cal.2d 140, 144, 302 P.2d 1, 3 (1956) (statute required that land be "substantially and directly benefited"); Application of Scroggin, 103 Cal. App.2d 281, 283, 229 P.2d 489, 491 (1951) (in the phrase "substantial sum," the word "substantial" imports a considerable amount of value in opposition to that which is inconsequential or small).

2. See Hoy v. Tornich, 199 Cal. 545, 554, 250 Pac. 565, 569 (1926) (instruction that conduct of child struck by automobile should be judged "by what child of similar age and understanding would be likely to do under like circumstances" was held not erroneous since "likely" as used was synonymous with "probable"); Horning v. Gerlach, 139 Cal. App. 470, 473, 34 P.2d 504, 505 (1934) (to constitute "wilful misconduct" within the automobile guest statute there must be either an intent to injure the guest or a degree of recklessness greater and beyond gross negligence; there must be a "probability of injury" to have wilful misconduct, the word "probable" being synonymous with "likely").

But another California case suggests that "likely" is a stronger word than "probable"; the chances are a bit greater if a thing is likely than if it is merely probable.[3]

If forced to choose between the two phrases, the staff prefers the phrase "exposes persons or property or both to a substantial risk of injury." The meaning of the phrase "substantial risk" is admittedly uncertain, but the purpose of its insertion in Section 901.2 can be indicated in the text of the Commission's recommendation. The phrase "likely to cause injury to persons or property" might be construed to impose too great a burden on the plaintiff in view of the intrepretation of "likely" as used in other contexts. See footnotes 2 and 3. Or, on the other hand, one might argue that a freeway is "likely" to cause injury to persons or property--in fact that it may be almost certain that one or more accidents will occur each day on a specific freeway. But, in view of the number of vehicles using the freeway, the freeway would not be considered to impose a "substantial risk of injury"--the risk to any individual using the freeway is insignificant, not substantial.

The staff suggests that the Commission consider also the following definitions of "dangerous condition":

> (a) "Dangerous condition" means that the public property is in such a condition that injury to persons or damage to property or both is reasonably foreseeable when the public

3. People v. Newell, 45 Cal. App.2d Supp. 811, 814, 114 P.2d 81, (1941) (under reckless driving statute, "wilful or . . . wanton disregard for the safety of persons or property" includes the case where an act is intentionally done with the "knowledge that serious injury is a probable (as distinguished from a possible) result, the word "probable" being defined as "having more evidence for than against; supported by evidence which inclines the mind to belief but leaves some room for doubt; likely").

property is used in a manner in which it is reasonably foreseeable that the public property will be used.

This alternative makes the test: Was injury reasonably foreseeable? If so, the property is in a dangerous condition. Whether the defendant is liable will depend, of course, on whether the defendant negligently created the condition or has notice of it, whether under the circumstances the condition should be corrected, etc.

Another alternative is:

> (a) "Dangerous condition" means a condition of public property that is dangerous when the public property is used in a manner in which it is reasonably foreseeable that it will be used.

This alternative leaves "dangerous" undefined (as does the existing California statute) and merely indicates that the property must be "dangerous" for reasonably foreseeable uses. One might argue that a jury can more intelligently determine whether property is "dangerous" than whether property creates a "substantial risk of" or "is likely to cause" injury.

Definition of "public entity." The definition of public entity has been revised so that it is complete without reference elsewhere for a definition of "local public entity." A definition of public entity in this article may become unnecessary if we develop a general definition applicable not only to the proposed legislation on dangerous conditions but also to proposed legislation on other areas of substantive liability.

SECTION 901.3

This is a statement of the so-called "trivial defect rule." This

section was approved at the February meeting. We have made a few technical changes to conform the provision to the language of other sections of the proposed legislation.

SECTION 901.4

This provision has not been considered previously by the Commission. The policy question involved was overlooked at the January meeting. The consultant suggests that there is little merit to the rule which now exists in California under which evidence that the injury to the plaintiff happened is permitted to be regarded by the jury as some evidence that the public property in question was dangerous. (See Study page 475.)

SECTIONS 901.5 and 901.6

Sections 901.5 and 901.6 impose liability for dangerous conditions of public property. These sections recognize two distinct bases of liability.

Section 901.5

Under Section 901.5, liability is based on the negligence of the public entity in creating the dangerous condition. This section does not require proof of notice of the dangerous condition, and the entity may not defend on the ground that adequate precautions were not feasible for lack of time or for any other reason.

At the February meeting, the Commission rejected a proposal to add such a provision to the Draft Statute. The reason stated was that an entity is chargeable with notice of what it creates, and in these cases

liability should depend upon whether the entity should have realized the dangerous nature of the condition it created. The matter is presented here again because the omission of such a provision will work a substantial change in the law, and the staff is uncertain as to whether such a change was actually intended. If such a change in the law is intended, Section 901.5 can be omitted and Section 901.6 will remain as the sole basis for liability for conditions of property.

Under existing law, the liability of a public entity for a condition of property may be based upon either (1) notice and failure to exercise reasonable diligence to repair or (2) the negligent creation of a dangerous condition. Justice Ashburn stated the basis for this second ground of liability in Pritchard v. Sully-Miller Contracting Co., 178 Cal. App.2d 246, 256 (1960), a case in which the City of Long Beach was urging that it had no authority to go on to State highway property to change the timing of a traffic signal it had negligently set to work as a trap:

> The action sanctioned by section 53051, Government Code, is based on negligence . . . , and the provision for notice to "the legislative body, board or person authorized to remedy the condition" is intended for the protection of the city, not to assist it in inflicting a wrong. The elements of notice and failure to exercise reasonable diligence ordinarily are essential to show culpability on the part of the city but where it has itself created the dangerous condition it is per se culpable and notice, knowledge and time for correction have become false quantities in the problem of liability.

The case held that where the condition is created by the entity, neither notice nor an opportunity to correct are necessary for liability. Justice Ashburn indicated that the existing Public Liability Act is not worded so precisely as to necessarily eliminate this basis of liability, and since it would be unreasonable to construe it to eliminate this basis

of liability the statute would not be so construed.

Other cases, too, have imposed liability where it has been apparent that there has not been notice and an opportunity to correct. Some of these cases indicate that creation of the condition merely eliminates the need for notice, but analysis of the facts will indicate that (as stated by Justice Ashburn) the need for opportunity to correct has also been eliminated.[4]

The liability of private landowners for dangerous conditions has the same two bases that are expressed in Sections 901.5 and 901.6. The general rule, of course, is that private landowners must warn their invitees of dangers which are known to the landowner (unless the condition is obvious to the invitee). In Hatfield v. Levy Bros., 18 Cal.2d 798, 806 (1941), the Supreme Court explained the requirement of "knowledge" as follows:

> Where the dangerous or defective condition of the property which causes the injury has been created by reason of the negligence of the owner of the property or his employee acting

4. See, for example, Fackrell v. City of San Diego, 26 Cal.2d 196, 206 (1945) ("where the dangerous condition is due to the negligent act or omission of the officers doing or directing the work it is unnecessary to prove as a condition to liability that they had notice of the condition, and the authority . . . to correct it"); Duran v. Gibson, 180 Cal. App.2d 753 (1960) (slippery condition caused by city truck washing debris from street, following semitrailer skidded and caused injuries involved); Teilhet v. Co. of Santa Clara, 149 Cal. App.2d 305 (1957) (smoke caused by weed burning crew created hazardous condition on adjoining road; Ass't County Road Commissioner--a "person authorized to remedy the condition"--was chargeable with notice because he authorized it); Selby v. County of Sacramento, 136 Cal. App.2d 94 (1956) (sewer line cut, exposing livestock in adjoining pasture to disease; "The work was conceived by and carried out in accordance with previous plans of the defendants, and, hence, . . . no further notice of the condition created thereby was needed . . . ."); Wood v. County of Santa Cruz, 133 Cal. App.2d 713 (1955) (brush cutting crew left brush protruding into roadway where it pierced motorcyclist's foot, notice given by fact crew negligently created the condition).

> within the scope of the employment, the owner of the property cannot be permitted to assert that he had no notice or knowledge of the defective or dangerous condition in an action by an invitee for injuries suffered by reason of the dangerous condition. Under such circumstances knowledge thereof is imputed to him . . . . Where the dangerous condition is brought about by natural wear and tear, or third persons, or acts of God or by other causes which are not due to the negligence of the owner, or his employees, then to impose liability the owner must have either actual or constructive knowledge of the dangerous condition or have been able by the exercise of ordinary care to discover the condition, which if known to him, he should realize as involving an unreasonable risk to invitees on his premises. His negligence in such cases is founded upon his failure to exercise ordinary care in remedying the defect after he has discovered it or as a man of ordinary prudence should have discovered it.

Thus, elimination of Section 901.5 probably will eliminate a certain amount of existing liability under the Public Liability Act, for the proposed statute articulates the basis for liability with a great deal more precision than does the existing statute. Moreover, the elimination may leave public entities immune from a liability they now have and which private occupiers now have where negligence of this sort can be proven. Of course, it is possible that the courts may construe this proposed statute as loosely as they have construed the existing Public Liability Act. But it seems more desirable to set forth this basis of liability expressly than to rely on the courts to create it by disregarding the language of the statute.

Section 901.6

Under Section 901.6, liability is based on failure to provide adequate protection to persons or property or both after notice of a dangerous condition. The section has been drafted to effectuate the policy decisions made at the February meeting.

SECTION 901.7

This section spells out what constitutes notice to the public entity of the existence of a condition. Section 901.6 requires not only that the public entity have "notice" of the existence of the condition but also that the public entity either realized or should have realized the dangerous nature of the condition.

Subdivision (a)--imputed notice.

Subdivision (a) of Section 901.7 provides for notice through "actual knowledge." The Public Liability Act requires that the governing board or a "person authorized to remedy the condition" must have notice of the condition. What person in the entity must have notice under Section 901.7 is not specifically indicated. The common law rules of imputed notice seem to be adequate to handle the problem of who must have the notice.

Civil Code Section 2332 provides:

> As against a principal, both principal and agent are deemed to have notice of whatever either has notice of, and ought, in good faith and the exercise of ordinary case and diligence, to communicate to the other.

Under this principle, "notice to an agent is not notice to the principal unless such knowledge is of a matter concerning which the agent has authority." Lorenz v. Rousseau, 85 Cal. App.1, 6 (1927). An employee's actual knowledge of the existence of a dangerous condition may be imputed, though, even in the absence of showing a specific duty of the employee to act in relation to the condition. Such knowledge may be imputed where such knowledge could reasonably be said to give rise to an employee's duty with respect to the condition to act as the

employer's representative. Thus, in Hollander v. Wilson Estate Co., 214 Cal. 582 (1932), complaints to an elevator operator concerning a grinding noise in an elevator (which later fell four stories) were held to impute notice to the owner. In Baker v. Stanford University, 133 Cal. App. 243 (1933), the knowledge of a staff doctor as to the faulty condition of an electric lamp was imputed to the hospital. Certainly, if a citizen telephones a complaint about a dangerous condition, the public entity should not be able to defend on the ground that the telephone receptionist failed to tell a "person authorized to remedy the defect."

The common law principle is not so broad, though, that notice will be imputed through employees who have no reasonable connection with the defect. No tort cases have been found, but analogous cases in other fields may be found in which the doctrine of imputed notice is limited. For instance, in Lorenz v. Rousseau, 85 Cal. App.1 (1927), the knowledge of a real estate agent--whose only duty was to collect the rent--that the lessee was constructing an improvement on the property was not imputed to the owner so as to require the posting and recording of a notice of nonresponsibility under the mechanic's lien law. In Primm v. Joyce, 83 Cal. App.2d 288 (1948), the knowledge of a rental collection agent that a lessee had sublet the premises was not imputed to the owner so as to charge him with knowledge that a condition of the lease against subletting had been breached.

Since the common law standard for imputing notice, as articulated in the Civil Code, seems like a sensible and workable standard, the staff does not believe that it is necessary or desirable to attempt

to spell out the doctrine of imputed notice with particularity in the dangerous conditions statute.

Subdivisions (c) and (d)--reasonable inspection system.

Generally. Subdivisions (c) and (d) specify what constitutes a reasonable inspection system and provide for constructive notice of anything that such a reasonable inspection system would have disclosed. The burden of proof has been left on the plaintiff, for the existence of a dangerous condition for an "unreasonable" length of time so as to charge the entity with constructive notice is meaningful only in relation to the nature of the inspection system that would have revealed the defect. hus, the plaintiff can prove that a condition existed for "an unreasonable length of time" only if he shows that it existed for a period long enough for it be be discovered by "a reasonable inspection system." Normally, the burden of showing "unreasonable" conduct to support the charge of negligence is on the plaintiff.

The inspection required by these subdivisions is probably the same as that required by common law of private occupiers of land. For example, in Devins v. Goldberg, 33 Cal.2d 173 (1948), it was held that an employer had the duty of inspecting his property to learn of dangers not apparent to the eye so as to make his property reasonably safe for his employees. A private occupier, too, owes invitees the duty to make reasonable inspections to see that the premises are safe for the invitees. "The main difference between the duty owed a licensee and that owed the person referred to in California as an invitee . . . is that in addition to using ordinary care not to harm the invitee or business visitor the landowner must

use reasonable care to discover conditions which might cause harm." Boucher v. American Bridge Co., 95 Cal. App.2d 659 (1950). However, the private occupier's duty to inspect, as a general rule, does not extend beyond the "area of invitation." Thus, in Powell v. Jones, 133 Cal. App.2d 601 (1955), the defendant was held not liable to a baby sitter who was injured by a dangerous condition because the injury occurred while the sitter was returning from a personal errand next door and was entering the house by an entrance that she would not have been expected to use for her baby sitting activities. When the sitter was outside the area where she was employed to be, the property owner's duty--the court said--was merely to refrain from active negligence or wanton or wilful injury.

In fact, except for the "area of invitation" the private occupier of land has neither the duty of inspection nor the duty of repair. The private occupier's duty so far as the remainder of his property is concerned is merely to refrain from wanton or wilful injury. In Hume v. Hart, 109 Cal. App.2d 614 (1952), the defendant was held not liable to a trespasser who fell into an open grease pit. In Palmquist v. Mercer, 43 Cal.2d 92 (1954), the Union Oil Company was held to be under no duty to warn horseback riders of a low clearance created by a pipeline trestle because such riders were licensees and the Oil Company's only duty was to refrain from "wanton or wilful injury."

From the foregoing, it appears that a private occupier's general inspection duty is to see that the property is safe for people who have been invited to use it, whether as employees or as patrons. In some instances, though, the duty of inspection has been extended further.

These duties are discussed in Dunn v. P.G. & E. Co., 43 Cal.2d (1954). Quoting in part from prior cases involving power lines, the court said:

> [W]ires carrying electricity must be carefully and properly insulated by those maintaining them at all places where there is a reasonable probability of injury to persons or property therefrom. Upon those controlling such instrumentality and force is imposed the duty of reasonable and prompt inspection of the wires and appliances and to be diligent therein . . . .
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> In Lozano v. Pacific Gas & Elec. Co. (1945), 70 Cal. App.2d 415, 420, 422, . . . it is declared that the defendant company's duty "to use care so as to avoid injury to persons or property was established by a clear showing that the company owned, maintained and operated the power line in question. Such duty extended to every person rightfully on the premises and was obviated only as to trespassers and individuals unlawfully there at the time of injury.

So far as trespassers are concerned, no California case has been found clearly indicating that there is ever a duty to inspect property to see that it does not create a hazard to the trespassers. There are a few cases, though, from which such a duty might be implied. It is clear that a private occupier does have some duties to foreseeable trespassers. He may not wantonly and wilfully create conditions intended to injure a trespasser. He may not create conditions that are extremely hazardous to immature persons who are likely to trespass and who will not appreciate the hazard that exists. King v. Lennen, 53 Cal.2d 340 (1959). Moreover, he may not negligently create "traps" into which foreseeable trespassers may fall without any appreciation of danger. Blaylock v. Jensen, 44 Cal. App.2d 850 (1941). Apparently, if there is a statutory standard of safety to be observed which has been imposed for the protection of the general public, a violation of the standard will result in liability even to a trespasser. Langazo v. San Joaquin Light & Power Co., 32 Cal. App.2d 678 (1939).

In none of the cases cited in the preceding paragraph, is there any specific indication that the private landowner owes a duty to look for the conditions that will result in injury to the trespasser. However, the facts of some of the cases indicate that there may in fact be such a duty. In the Blaylock case, the plaintiff went into an oil sump covered with dirt to rescue her dog and became imbedded in tar. The court held that the evidence of defendant's negligence was sufficient but reversed for a finding upon the question of plaintiff's contributory negligence. One may surmise that the hazard of the sump became concealed and the sump became a "trap" because of the defendant's failure to regularly inspect and take precautions. Malloy v. Hibernia Sav. & Loan Soc., 3 Cal. Unrep. 76 (1889) is similar. There a small child fell into an open cesspool that was covered with dirt so that it appeared the same as the surrounding ground. The defendant was held liable. In Loftus v. Dehail, 133 Cal. 214, 218 (1901), the Supreme Court explained that the defendant would have been liable "had an adult been killed under the same circumstances, for the complaint showed a veritable trap--a cesspool, open and unguarded, yet with its surface covered with a layer of deceptive earth to a level with the adjacent land. Into such a trap anyone, adult or child, might have walked." Again, one may surmise that the negligence involved may have been the failure to inspect to see that the obvious hazard did not become concealed. The unreported case, though, seems to predicate liability on the removal of the surrounding fence. The Langazo case might be read to require power companies to inspect their lines to see that they comply with P.U.C. safety orders and failure to do so may result in liability to trespassers; however, such a duty is nowhere stated.

Subdivision (d) is contained in the draft of Section 901.7 to clarify some of these uncertainties so far as public entities are concerned. It restates what the cases have held the private occupier's duty is to licensees. It may state what a private occupier's duty will be held to be to foreseeable trespassers if a proper case is presented. In any event, the staff believes that the duty it imposes is not an unreasonable one.

Alternative subdivision (c). The Commission wished to consider an alternative to subdivisions (c) and (d) which would define the duty of inspection as a general duty to conduct such inspections as are reasonable to discover dangerous conditions. Such an alternative is as follows:

> (c) The dangerous condition would have been revealed by an inspection system that was reasonably adequate (considering the practicability and cost of inspection weighed against the likelihood and magnitude of potential danger) to inform the public entity whether the property is safe [or "is in a dangerous condition."]

Unlike the scope of the inspection duties of private occupiers--which are articulated with considerable precision in the appellate opinions--the scope of a public entity's inspection duty is left by this alternative subdivision for decision by the trier of fact with only a very general statement of the standard to be applied. Administrative officials would have little guide for determining when they have met legal inspection requirements, and insurance companies would have little guide for determining the cost of liability coverage. On the other hand, proposed subdivisions (c) and (d) set forth a standard for a reasonable inspection system that is as precise as that developed by the appellate courts for private land occupiers.

Examples. To show how the respective standards under proposed subdivisions (c) and (d) and under alternative subdivision (c) would work, consider the following cases:

1. State University (S.U.) owns, in addition to its campus grounds, a large tract of undeveloped land. This land is used by horseback riders, picnickers, kite fliers and lovers. Although the land is fenced, S.U. makes no effort to keep these people off of its land. P, a horseback rider, is riding rapidly along a path worn by previous horses when the horse rounds a turn and smashes P into a tree limb that fell across the path at head level during a recent storm which felled a number of trees. P sues for his injuries. P introduces evidence showing that S.U. is constructing a linear accelerator upon its undeveloped land, that consequently personnel of the university pass in the vicinity of the horse path on which the injury occured, that it would not be an unreasonable expenditure of either time or money for such personnel to travel along the horse path from time to time to look for such hazards and for S.U. to warn users of such hazards.

Under these facts, the alternative subdivision (c) would permit S.U. to be held liable, for S.U. is charged with notice of what a reasonable inspection would have revealed. Subdivision (c) and (d) contained in the draft would require a holding of no liability because S.U. had no actual notice and no duty to inspect, and hence no duty arose to protect persons against the condition. If S.U. were Stanford University instead of a public school, there would be no liability, for private occupiers don't have an obligation to inspect unless they have invited people into the area or have created extra-hazardous artificial conditions. Moreover,

even if Stanford had actual knowledge of the condition there would be no liability, for a private occupier's duty to licensees is only to refrain from wanton and wilful injury. Palmquist v. Mercer, 43 Cal.2d 92 (1954).

(One may surmise that after the first case of liability, S.U. would diligently seek to exclude all intruders from its property.)

2. County Road Commissioner A inspects a county maintained bridge to see if the creek flowing underneath has caused an undue amount of erosion. While inspecting the bridge, he notices a pathway alongside the stream. Although the path is somewhat hazardous, the risks involved in traversing it are apparent to anyone using it. Several months later, P, a fisherman, is seriously injured when a portion of the path gives way, the stream having undermined the path in a way not apparent to the users of the path. P sues the county because the injury occured upon land owned by the county. P introduces evidence to show that county road personnel have done repair work on the road in the vicinity and have also performed maintenance work on the bridge since the defect was created, that consequently it would have involved no great expenditure of time or money on the part of the county to have had a person inspect the path for hidden defects such as that which caused the injury, that since the path was known to A the use of the path in the manner P was using it when injured was reasonably foreseeable, and that a reasonable inspection would have revealed the defect.

Alternative subdivision (c) would permit the county to be held liable. Subdivisions (c) and (d) of the draft statute would require a holding of no liability, for the path was not created or maintained by the county for any use and, hence, there would be no duty to inspect it.

If, instead of a county, the defendant was P.G. & E who discovered the path on its property near a bridge maintained for its dam personnel, there would be no liability, for private occupiers of land owe a duty of inspection only to invitees and only for the "area of invitation"--except for certain artificial conditions involving great danger.

3. The State maintains an agricultural experiment station. The station is operated generally as a farm. The station manager is aware that one corner of a field is used as a short cut by persons in the neighborhood. Passers-by occasionally throw broken bottles and other trash on the field; however, the quantity involved has never been so large as to interfere with the agricultural machinery or farm operations and no efforts have ever been made to remove the small amounts involved. Two weeks after the field is plowed, P cuts his foot on a broken bottle concealed by some loose dirt thrown over the bottle by the plow. P sues the State and shows that the persons using the field for a short cut generally crossed the corner of the field that he was crossing when his foot was cut, that the presence of broken glass created a reasonably foreseeable risk to persons crossing the field, that the State could have had one of its personnel periodically inspect the area where people crossed, that a mere visual inspection conducted at intervals of a week would cost the State no more than five minutes per week, that such a visual inspection would have revealed the bottle that caused P's injury before it became concealed by the plowing, and that the removal of the few bottles and cans involved could have been accomplished without additional cost if the persons inspecting the property picked up the bottles and cans that were found. P also argues that the field is an artificial condition exposing persons in proximity thereto to an unreasonable risk of harm.

Under alternative subdivision (c), the State could be held liable because an unreasonable effort on the part of the State would not be required to inspect the corner of the field and to keep it in a reasonably safe condition for short-cutters. Under subdivision (c) of the draft statute, the State would not be liable, for it had no actual notice and was not required to inspect the area to see that it was safe for tolerated trespassers. Its inspection duty under subdivision (c) of the draft statute would be to see that the field is safe for agricultural purposes. Under subdivision (d) of the draft statute, the State would not be liable unless it was reasonably foreseeable that the plowed field would become so dangerous as to be very likely to cause death or serious bodily harm and unless an inspection system adequate to reveal such serious hazards would have revealed the bottle.

If the farm were operated by California Packing Corporation, there would be no liability, for there would be no duty to inspect in order to make the property safe for trespassers.

4. The San Pablo Utility District (SPUD) maintains a network of high tension wires running half the width of the State to bring power to its consumers. In the mountains, SPUD has acquired fee simple title to a considerable amount of property surrounding its dam and power generating facilities. Upon the SPUD property at a considerable distance from the dam, deer hunters, campers, fishermen, etc., have worn a pathway underneath the power lines. The path leads to and through a wire fence in a state of disrepair that was located on SPUD's property when the property was acquired. SPUD ceases to use one of its transmission lines, but does not remove it because it anticipates placing it in service

again when power demands increase. In the course of time, wind and storm cause the abandoned line to deteriorate and to break and hang to the ground in several places. The breaks are not noticed because power transmission is not interrupted. T, a hunter, is electrocuted when he touches the wires of the fence. Subsequent investigation reveals that a storm the previous night had blown the abandoned line into contact with both a live wire and the wires of the fence. P, suing for wrongful death, shows that the wire had deteriorated so that it was in such a condition that the likelihood of its breaking would have been apparent to anyone looking at it, that because of its proximity to live wires an extreme hazard was thus created toward anyone using the path, and that periodic inspections would have revealed the condition to SPUD and would have permitted SPUD to either repair the wire or to post warnings to the users of the path. SPUD defends on the ground that T was a trespasser to whom no duty was owed to inspect or make the property safe, that it conducted reasonable inspections of its live wires which were all in good condition, and that it did not inspect wires not in service unless and until they were to be placed in service.

Under alternative (c), SPUD could be held liable if the trier of fact found that the risk of injury was not disproportionately slight when compared with the cost of inspection and repair. Under subdivision (c) of the draft statute, SPUD would not be liable in the absence of a showing that the danger would reasonably have been revealed by an inspection adequate to keep the property safe for power transmission purposes. However, under subdivision (d) of the draft statute, SPUD could be held liable because the condition was an artificial condition

that it was reasonably foreseeable would be very likely to kill users of the pathway if allowed to deteriorate, and, therefore, SPUD would have the duty to inspect to see whether such deterioration had taken place. Under the same circumstances, P.G. & E.'s liability, if any, would appear to depend upon whether a P.U.C. safety order or any other statutory duty had been violated. Existing cases have clearly held that the duty of inspection of private entities in regard to power lines runs to licensees, but the cases have indicated that there is no duty to inspect for trespassers. An alternative basis for the holding in Langazo v. San Joaquin Light & Pwr. Co., 32 Cal. App.2d 678 (1939) is that the defendant is liable for violation of statutory duties even to trespassers. However, the court also held in that case that the plaintiff was not a trespasser as to the defendant who was merely an easement holder; hence, its authority may be questioned.

5. P is injured by a defective door while using the city hall as a short cut from one street to another. Under both alternative (c) and subdivision (c) of the draft the city would be liable if a reasonable inspection would have revealed the defect. Both proposals would here impose liability where common law would deny liability, for there is no duty of a private occupier to licensees save to refrain from active negligence or wanton or wilful injury.

6. Ice plant grows onto the sidewalk of the City of Iceplantium. P is injured when he trips over the ice plant. Under both proposals, the city would be liable if a reasonable inspection system to keep the sidewalks safe for users thereof would have revealed the hazard.

7. H is killed by a fall from a cliff overlooking the ocean. The

cliff is owned by the State but is not maintained for any purpose. A ranger station is nearby which is maintained for a fire lookout. Those maintaining the ranger station are unaware of any hazard in connection with the cliff that is not obvious to anyone. No inspections are made. The rangers are aware that the cliff is frequently climbed on by picnickers. In fact, the cliff is composed of a type of rock that is quite crumbly. Unknown to the rangers or to H, wind and storm had so undermined a portion of the cliff that an apparently solid ledge on which H was standing gave way. P, suing for wrongful death, shows that the rangers were well aware that people climbed on the cliff, that reasonable inspections conducted at no additional cost would have revealed the hazardous condition of the rock, that such inspections would have revealed the hazardous condition of the ledge that crumbled away, a sign warning of the hazard would have been sufficient to prevent H's death, and that the State owed a duty to see that the cliff was safe for climbing since it was reasonably foreseeable that people would use it for that purpose.

Under alternative (c), the State could be held liable. Under subdivisions (c) and (d) of the draft, the cliff not being an artificial condition, the State would not be liable for it would have no duty to inspect to see whether the cliff was safe for climbers, for the State had extended no invitation to climb the cliff and had not represented in any way that the cliff was safe for that purpose. If the owner of the cliff were a private person, there would be no liability, for such persons have no duty to inspect their property to see that it is safe for licensees or trespassers.

8. Same facts as 7, except that the rangers in the course of their

duties happen to discover the extremely hazardous condition of the cliff. Under either proposal it is likely that there would be liability if no action were taken to warn those exposed to the risk of the nature of the hazard to be encountered. A private person would still be immune from liability, for he has no duty to warn licensees or trespassers of natural conditions. His duty to such users of his property is to refrain from active negligence or wanton or wilful injury.

Staff recommendation. The foregoing examples are adequate to show how the respective standards of inspection would work. The draft statute proceeds from the same philosophical basis as the common law, i.e., the risk of injury from dangerous conditions of the property is sometimes placed on the landowner and sometimes placed on the user. This allocation of risk generally seems to be based upon the reasonable expectations and the implied representations of the parties. If a person invites people to use his property or maintains property for their use, the users may reasonably expect that he will act reasonably to discover hazards and make the property safe for such use. On the other hand, if no such invitation or maintenance is involved, the risk is assigned to the user except where an artificial condition creating an extreme hazard is involved. The alternative subdivision (c) potentially assigns all risk to the land owner unless the cost of discovering the hazards becomes unreasonably great. The staff believes that the magnitude of the potential risk thus assigned to the public property owner will in many cases force it to act diligently to keep people off its property in order to avoid liability. This will merely result in the withdrawal of large areas of public land from permitted use. The staff believes

this result is undesirable.

SECTION 901.8

The Commission wished to consider the following as an alternative to paragraphs (1), (2) and (3) of Section 901.8(a):

> The inaction of the public entity or the action taken by the public entity to remedy the condition or to protect the persons and property foreseeably exposed to the risk was reasonable. The reasonableness of the inaction or action of the public entity shall be determined by taking into consideration the time and opportunity that the public entity had to take action and by weighing the probability and gravity of harm to persons and property foreseeably exposed to the risk of injury or damage against the practicability and cost of remedying the condition or protecting the persons and property against it.

SECTION 901.9

This section is based on Section 53052 of the Government Code. Section 53052 is repealed in the proposed statute. The text of the repealed section is shown in Section 4 of the proposed statute.

Section 901.9 is unnecessary since it duplicates the provisions of Division 3.5 of Title 1 of the Government Code and will be compiled in that division. Nevertheless, it is perhaps desirable to repeat it in the proposed statute so that interested persons can determine that we do not intend to make any change in the law. We can omit the section if we find that it is unnecessary at the time we examine all the legislation we will propose to the 1963 Legislative Session on the subject of sovereign immunity.

SECTION 901.10

This section is based on Section 53054 of the Government Code.

Section 53054 is repealed in the proposed statute. The text of the repealed section is shown in Section 5 of the proposed statute.

Section 901.10 will, no doubt, merely duplicate our proposed legislation on the defense of public officers and employees. However, since our proposed legislation on that subject has not yet been developed, it is proposed to repeat in the proposed statute the provisions of Section 53054 so that interested persons can determine that we do not propose to make any change in the law. We will omit this section if it becomes unnecessary in view of our revision of the law relating to the defense of public officers and employees.

SECTION 901.11

This section is based on Section 53055 of the Government Code. Section 53055 is repealed in the proposed statute. The text of the repealed section is shown in Section 6 of the proposed statute.

Section 901.11 will become unnecessary if we provide for authority to pay or compromise claims in our recommended statute relating to administrative procedures to be followed in considering and paying claims. However, since our proposed legislation on that subject has not yet been developed, it is proposed to repeat in the proposed statute the provisions of Sections 53055 so that interested persons can determine that we do not propose to make any change in the law. We will omit this section if it becomes unnecessary in view of our revision of the law relating to administrative procedures to be followed in considering and paying claims.

SECTION 901.12

This section is based on Section 53056 of the Government Code. Section 53056 is repealed in the proposed statute. The text of the repealed section is shown in Section 7 of the proposed statute.

Section 901.12 will, no doubt, become unnecessary in view of our proposed revisions of the law relating to insurance of public entities and public officers and employees. However, since our proposed legislation on that subject has not yet been developed, it is proposed to repeat in the proposed statute the provisions of Section 53056 so that interested persons can determine that we do not propose to make any change in the law. We will omit this section if it becomes unnecessary in view of our revision of the law relating to insurance of public entities and public officers and employees.

SECTIONS 901.13 to 901.15

If we are to have a comprehensive statute relating to liability for dangerous conditions of public property, we should include provisions dealing with the personal liability of public officers and employees for death or injuries to persons or damage to property resulting from dangerous conditions of public property. Sections 901.13 to 901.15 are provisions that deal with this matter.

Sections 901.13 and 901.14 are based on Section 1953 of the Government Code as that section has been interpreted. Section 1953 is repealed by the proposed statute. The text of Section 1953 is shown in Section 2 of the proposed statute.

Under Section 901.13 a public officer or employee may be held liable

for a dangerous condition created by his negligent or wrongful act. There is no requirement of a showing under this section that the officer or employee had notice of the dangerous condition or that he realized or should have realized its dangerous character or that he had the funds immediately available to correct the condition. The negligence upon which liability is based under Section 901.13 is negligence in creating the condition. In Fackrell v. City of San Diego, 26 Cal.2d 196, 205 (1945), the court quoted with approval the following language from Black v. Southern Pac. Co., 124 Cal. App. 321, 328 (1932), construing Section 1953:

> While the record discloses no evidence that the engineer or any member of the board of public works had knowledge or notice [of the dangerous condition] before the accident . . . . it has been held that where the dangerous condition is due to the negligent act or omission of the officers doing or directing the work it is unnecessary to prove as a condition to liability that they had notice of the condition, and the authority and duty, with funds available, to correct it. Nor should a different rule prevail where a proposed improvement will be reasonably certain to endanger the public unless precautionary measures are taken as a part of the projected work, and it is completed and left without the necessary safeguards. [emphasis and omission by Supreme Court]

In the Black case, the court held certain public officers liable on the grounds "that the improvement was carelessly planned and executed, and that the omissions complained of constituted negligence on the part of the officers having charge of street work."

[redacted]

Under Section 901.14, a public officer or employee may be held

liable for a dangerous condition if he had "actual knowledge" of the dangerous condition, realized or should have realized that the condition was dangerous, had the authority and duty to repair and funds were immediately available for that purpose and failed to repair or give adequate warning within a reasonable time after notice and ability to repair. This section is a substantial codification and clarification of Section 1953. Three significant changes are made in the language of Section 1953:

(1) The words "had actual knowledge" are substituted for "had notice."

(2) The requirement that the plaintiff prove he exercised due care to avoid the dangers due to the condition has been eliminated consistently with the view the Commission has taken on entity liability.

(3) The plaintiff's burden of proof has been more precisely stated.

Section 901.15 of the proposed statute requires that a claim be filed against the public entity in order to enforce the personal liability of the public officer or employee. Section 901.15 is based on Section 803 of the Government Code. While an employee claims statute is undesirable where it permits an employee to conceal his public employment for the 100-day period and thus avoid liability, this possibility does not exist in the case of liability for a dangerous condition of public property. The claims provision provides the public officer or employee with protection against being held personally liable after the period for filing the claim against the public entity has expired. Note that the proposed provision is not limited to "negligent" torts.

There are no provisions in the proposed statute to provide for indemnification of a public officer or employee where he is held personally liable under the proposed statute, or to require insurance or self-insurance, or to prevent the public entity seeking contribution from the negligent public officer or employee. These are general problems that will be dealt with in a general statute. It is not considered desirable to attempt to draft such statutes for each area of liability.

REPEALS

Sections 2 through 7 repeal various sections of the Government Code. The repealed sections correspond with sections of the proposed draft as indicated below:

Repealed Section	Proposed Draft
1953	901.13 to 901.15
53051	901.1 to 901.8
53052	901.9
53054	901.10
53055	901.11
53056	901.12

AMENDMENT

Section 8 amends Section 8535 of the Water Code to make clear that the proposed statute applies to the Sacramento and San Joaquin Drainage District and its officers. There is no apparent reason to single out a single drainage district for special immunity. Section 8535 was not repealed because the exemption from liability provided by that section

is apparently broader than merely liability for dangerous conditions of public property.

REPEAL OF SECTIONS HELD IMPLIEDLY REPEALED

Section 9 repeals Sections 5640 and 5641 of the Streets and Highways Code. These two sections provide for immunity of cities, counties and other municipal corporations for dangerous conditions of streets and sidewalks and prescribe conditions for holding their officers liable for such defects. Both sections were held impliedly repealed to the extent they are inconsistent with the Public Liability Act of 1923. Jones v. South San Francisco, 96 Cal. App.2d 427, 216 P.2d 25 (1950). The sections should be specifically repealed because they are inconsistent with the proposed legislation.

It should be noted that Sections 5640 and 5641 may have some scope of application after the Muskopf case. Sections 5640 and 5641 were impliedly repealed by the Public Liability Act of 1923 because that Act imposed liability providing the plaintiff could bring his case within its provisions. Thus, so far as streets and sidewalks were concerned the Public Liability Act of 1923 was an exclusive source of liability prior to the Muskopf case. What effect does the Muskopf decision have? Does that decision mean that a plaintiff can now base an action for injury resulting from a defective street or sidewalk on either the Public Liability Act or upon common law principles of liability of owners and occupiers of land. The answer probably is that Sections 5640 and 5641 would operate to prevent liability on any basis other than the Public Liability Act where a street or sidewalk is alleged to be in a defective condition.

See Kotronakis v. San Francisco, 13 Cal. Rptr. 709, 192 A.C.A. 655 (May 1961) (suggesting that Section 5640, granting immunity for street and sidewalk defects, prevents application of common law principles of liability because the Muskopf decision could not have the effect of repealing Section 5640). It should also be noted that there is some authority to the effect that the Public Liability Act is an exclusive source of liability for dangerous conditions of property used for a "governmental" purpose even though such property is not of the type described in Section 5640. See Kotronakis v. San Francisco, 13 Cal. Rptr. 709, 192 A.C.A 655 (May 1961); Ngim v. San Francisco, 13 Cal. Rptr. 850, 193 A.C.A. 134 (1961) (Sewer).

APPLICATION OF STATUTE

We have not attempted in the proposed statute to indicate the extent to which the statute will apply to causes of action arising prior to its effective date. Difficult problems will exist with respect to pre-Muskopf and post-Muskopf claims arising prior to the effective date of the statute. This is, however, believed to be a general problem that can be taken up later.

Respectfully submitted,

The Staff

EXHIBIT I

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

An act to add Chapter 4 (commencing with Section 900) to Division 3.5 of Title 1 of the Government Code, and to repeal Sections 1953, 53051, 53052, 53054, 53055 and 53056 of the Government Code, and to amend Section 8535 of the Water Code, and to repeal Sections 5640 and 5641 of the Streets and Highways Code, relating to dangerous conditions of public property.

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

SECTION 1. Chapter 4 (commending with Section 900) is added to Division 3.5 of Title 1 of the Government Code, to read:

CHAPTER 4. LIABILITY OF PUBLIC ENTITIES

Article 1. [Section 900.1 *et seq.* - reserved]

* * *

Article 2. Dangerous Conditions of Public Property

901.1 Except as otherwise provided by statute, this

article exclusively governs the liability of public entities and public officers and employees for death or injury of a person or damage to property, or both, arising out of a dangerous condition of public property and applies whether the public property is owned, used or maintained for a governmental or proprietary purpose.

901.2. As used in this article:

(a) "Dangerous condition" means a condition of public property that exposes persons or property or both to a substantial risk of injury or damage when the public property is used in a manner in which it is reasonably foreseeable that the public property will be used.

(b) "Public entity" includes the State and a county, city, city and county, district, local authority or other political subdivision of the State.

901.3. A condition is not a dangerous condition within the meaning of this article if the trial or appellate court determines, viewing the evidence most favorably to the plaintiff, that the risk created by the condition was of such a minor, trivial or insignificant nature in view of the surrounding circumstances that a reasonable person would not conclude that the condition exposed persons or property to a substantial risk of injury or damage when the public property was used in a manner in which it was reasonably

foreseeable that the public property would be used.

901.4 The mere fact of the occurrence of death or injury of a person or damage to property, or both, arising out of the condition of public property is not in itself evidence that the property was in a dangerous condition.

901.5 Except as provided in subdivision (b) of Section 901.8, a public entity is liable for death or injury of a person or for damage to property, or both, caused by a dangerous condition of the property of the public entity if the plaintiff pleads and proves all of the following:

(a) The property of the public entity was in a dangerous condition.

(b) The dangerous condition created a reasonably foreseeable risk to the decedent or injured person or damaged property, as the case may be.

(c) The death, injury or damage was proximately caused by the dangerous condition.

(d) The dangerous condition was created by a negligent or wrongful act of an officer, agent or employee of the public entity acting in the course and scope of his office, agency or employment.

(e) The public entity did not take adequate measures to protect persons or property, or both, as the case may be,

against the dangerous condition.

901.6 Except as provided in Section 901.8, a public entity is liable for death or injury of a person or for damage to property, or both, caused by a dangerous condition of the property of the public entity if the plaintiff pleads and proves all of the following:

(a) The property of the public entity was in a dangerous condition.

(b) The dangerous condition created a reasonably foreseeable risk to the decedent or injured person or damaged property, as the case may be.

(c) The death, injury or damage was proximately caused by the dangerous condition.

(d) The public entity had notice of the existence of the condition under Section 901.7.

(e) The public entity realized or should have realized that the condition was a dangerous condition.

(f) The public entity did not take adequate measures to protect persons or property or both, as the case may be, against the dangerous condition.

901.7 A public entity has notice of the existence of a condition within the meaning of Section 901.6 only if the plaintiff proves one or more of the following:

(a) The public entity had actual knowledge of the existence of the condition.

(b) The property was actually inspected by the public entity while in its dangerous condition and the existence of the condition would have been discovered if the inspection had been made with reasonable care in light of the purpose for which the inspection was made.

(c) The dangerous condition would have been revealed by an inspection system that was reasonably adequate (considering the practicability and cost of inspection weighed against the likelihood and magnitude of the potential danger to which failure to inspect would give rise) to inform the public entity whether the property was safe for the use or uses for which the public entity used or intended others to use the property.

(c) The dangerous condition was an artificial condition and:

(1) The artificial condition was one that was reasonably foreseeable might become so dangerous as to create a very substantial risk of death or serious bodily harm to persons who it is reasonably foreseeable would come into dangerous proximity to the condition; and

(2) The dangerous condition would have been revealed by an inspection system that was reasonably adequate (considering the practicability and cost of inspection weighed against the likelihood and magnitude of the potential danger to which

failure to inspect would give rise) to inform the public entity whether the artificial condition had become so dangerous as to create a very substantial risk of death or serious bodily harm to persons who it is reasonably foreseeable would come into dangerous proximity to the condition.

901.8. (a) A public entity is not liable under Section 901.6 for death or injury to persons or damage to property proximately caused by a dangerous condition of its property if the public entity pleads and proves any one or more of the following defenses:

(1) The public entity did not have a reasonable time (after it had notice and realized or should have realized that the condition was a dangerous condition) to take action to remedy the condition or to protect the persons and property foreseeably exposed to the risk of injury.

(2) The public entity took such action as was reasonable under the circumstances to remedy the condition or to protect the persons and property foreseeably exposed to the risk of injury. The reasonableness of the action taken by the public entity shall be determined by taking into consideration the time and opportunity that the public entity had to take action and by weighing the probability and gravity of potential harm to persons and property foreseeably exposed to the risk of injury or damage against the practicability and cost of remedying the condition or protecting the persons and property against it.

(3) The failure of the public entity to take action to remedy the dangerous condition or to protect persons and property foreseeably exposed to the risk of injury was reasonable because the impracticability or high cost, or both, of remedying the condition or protecting persons and property against it was disproportionate to the probability and gravity of potential harm to persons and property foreseeably exposed to the risk of injury or damage.

(b) A public entity is not liable under Section 901.5 or 901.6 for death or injury of persons or damage to property if the public entity pleads and proves either or both of the following defense:

(1) The person who suffered the death or injury to his person or damage to his property (i) knew of the dangerous condition, (ii) realized the risk of injury created thereby and nevertheless exposed himself to the risk and (iii) in view of all the circumstances, could reasonably be expected to avoid death, injury or damage by avoiding exposure to the risk.

(2) The person who suffered the death or the injury to his person or the damage to his property was contributorily negligent.

901.9 When it is claimed that a person has been killed or injured or property damaged as a result of the dangerous condition of public property, a written claim for damages shall

be presented in conformity with and shall be governed by Chapter 2 (commencing with Section 700) of Division 3.5 of Title 1 of the Government Code.

901.10 When an action is brought against a public entity under this article, the attorney for the public entity shall be defense counsel unless other counsel is provided. The fees and expenses of defending the suit are lawful charges against the public entity.

901.11 Where legal liability asserted under this article is admitted or disputed the public entity may pay a bona fide claim or compromise a disputed claim out of public funds if the attorney for the public entity approves of the compromise.

901.12. A public entity may insure against liability under this article, except a liability which may be insured against pursuant to Division 4 of the Labor Code, by self-insurance or insurance in an admitted insurer (except in the case of school district governing boards to the extent they are authorized to place insurance in nonadmitted insurers by Sections 1044 and 15802 of the Education Code.) The premium for the insurance is a proper charge against the public entity.

901.13. Subject to the same defenses that are available

under subdivision (b) of Section 901.8, an officer or employee of a public entity is personally liable for death or injury of a person or damage to property resulting from the dangerous condition of public property if the plaintiff pleads and proves all of the following:

(a) The property of the public entity was in a dangerous condition.

(b) The dangerous condition created a reasonably foreseeable risk to the decedent or injured person or damaged property, as the case may be.

(c) The death, injury or damage was proximately caused by the dangerous condition.

(d) The dangerous condition was created by a negligent or wrongful act of the officer or employee.

(e) No adequate measures were taken to protect persons or property or both, as the case may be, against the dangerous condition.

901.14. Subject to the same defenses that are available under subdivision (b) of Section 901.8, an officer or employee of a public entity is personally liable for death or injury of a person or damage to property resulting from the dangerous condition of public property if the plaintiff pleads and proves all of the following:

(a) The property of the public entity was in a dangerous condition.

(b) The dangerous condition created a reasonably foreseeable risk to the decedent or injured person or damaged property, as the case may be.

(c) The death, injury or damage was proximately caused by the dangerous condition.

(d) The officer or employee had actual knowledge of the condition and realized or should have realized that the condition was a dangerous condition.

(e) It was the duty of the public officer or employee to remedy the condition at the expense of the public entity and funds for that purpose were immediately available to him.

(f) No adequate measures were taken to protect persons or property or both, as the case may be, against the dangerous condition.

(g) The inaction of, or action taken by, the public officer or employee to remedy the condition or to protect persons and property foreseeably exposed to the risk was unreasonable. The reasonableness of the inaction or action of the public officer or employee shall be determined by taking into consideration the time and opportunity that he had to take action and by weighing the probability and gravity of potential harm to persons and property foreseeably exposed to the risk of injury or damage against the practicability and cost of remedying the condition or protecting persons and property against it.

901.15. A cause of action for damages against a public officer or employee under this article is barred unless a claim for such damages has been presented to the public entity in the manner and within the period prescribed by law as a condition to maintaining an action therefor against the public entity.

SEC. 2. Section 1953 of the Government Code is repealed.

[1953. No officer of the State or of any district, county, or city is liable for any damage or injury to any person or property resulting from the defective or dangerous condition of any public property, unless all of the following first appear.] REPEALED

[(a) The injury sustained was the direct and proximate result of such defective or dangerous condition.] REPEALED

[(b) The officer had notice of such defective or dangerous condition or such defective or dangerous condition was directly attributable to work done by him, or under his direction, in a negligent, careless or unworkmanlike manner.] REPEALED

[(c) He had authority and it was his duty to remedy such condition at the expense of the State or of a political subdivision thereof and that funds for that purpose were immediately available to him.] REPEALED

[(d) Within a reasonable time after receiving such notice and being able to remedy such condition, he failed

so to do, or failed to take reasonable steps to give adequate warning of such condition.]

[(e) The damage or injury was sustained while such public property was being carefully used, and due care was being exercised to avoid the danger due to such condition.]

REPEALED

SEC. 3. Section 53051 of the Government Code is repealed.

[53051. A local agency is liable for injuries to persons and property resulting from the dangerous or defective condition of public property if the legislative body, board, or person authorized to remedy the condition:]

[(a) Had knowledge or notice of the defective or dangerous condition.]

[(b) For a reasonable time after acquiring knowledge or receiving notice, failed to remedy the condition or to take action reasonably necessary to protect the public against the condition.]

REPEALED

SEC. 4. Section 53052 of the Government Code is repealed.

[53052. When it is claimed that a person has been injured or property damaged as a result of the dangerous or defective condition of public property, a written claim for damages shall be presented in conformity with and shall be governed by Chapter 2 (commencing with Section 700) of Division 3.5 of Title 1 of the Government Code.]

REPEALED

SEC 5. Section 53054 of the Government Code is repealed.

[53054. When a damage suit is brought against a local agency for injuries to person or property allegedly received as a result of the dangerous or defective condition of public property, the attorney for the local agency shall be defense counsel unless other counsel is provided for. The fees and expenses of defending the suit are lawful charges against the local agency.]

REPEALED

SEC. 6. Section 53055 of the Government Code is repealed.

[53055. When legal liability is admitted or disputed the local agency may pay a bona fide claim or compromise a disputed claim out of public funds, if the attorney for the local agency approves of the compromise.]

REPEALED

SEC. 7. Section 53056 of the Government Code is repealed.

[53056. A local agency may insure against liability, except a liability which may be insured against pursuant to Division 4 of the Labor Code, for injuries or damages resulting from the dangerous or defective condition of public property by self-insurance, or insurance in an admitted insurer (except in the case of school district governing boards to the extent they are authorized to

REPEALED

place insurance in nonadmitted insurers by Sections 1044 and 15802 of the Education Code). The premium for the insurance is a charge against the local agency.]

SEC. 8. Section 8535 of the Water Code is amended to read:

8535. Except as otherwise provided in Article 2 of Chapter 4 of Division 3.5 of Title 1 of the Government Code, the drainage district, the board and the members thereof are not responsible or liable for the operation or maintenance of levees, overflow channels, by-passes, weirs, cuts, canals, pumps, drainage ditches, sumps, bridges, basins, or other flood control works within or belonging to the drainage district.

SEC. 9. Sections 5640 and 5641 of the Streets and Highways Code are repealed.

[5640. If, because any graded street or sidewalk is out of repair and in condition to endanger persons or propert passing thereon, any person, while carefully using the street or sidewalk and exercising ordinary care to avoid the danger, suffers damage to his person or property, through any such defect therein, no recourse for damages thus suffered shall be had against the city.] REPEALED

[5641. If the defect in the street or sidewalk has existed for a period of 24 hours or more after written notice thereof to the superintendent of streets, then REPEALED

the person on whom the law may have imposed the obligations to repair such defect in the street or sidewalk, and also the officer through whose official negligence such defect remains unrepaired, shall be jointly and severally liable to the party injured for the damage sustained; provided, that the superintendent of streets has the authority to make the repairs, under the direction of the legislative body, at the expense of the city.]

REPEALED