

4/10/62

Memorandum No. 19(1962)

Subject: Study No. 52(L) - Sovereign Immunity (Revisions of Claims Statutes)

Attached on blue pages is a draft statute that would make a number of revisions in the statutes relating to the presentation of claims against (1) the State, (2) local public entities and (3) public officers and employees. The draft statute reflects the basic policy decisions previously made by the Commission and also contains some revisions suggested by the staff.

The following are comments directed toward the draft statute:

1. Section 621. This amendment eliminates the specific language relating to the contents of a claim and the time and manner of presenting a claim. It substitutes a reference to a new article--Article 5--which sets out these matters.

2. Section 641. This amendment incorporates by reference the new article--Article 5--which sets out the contents of a claim and the time and manner of presenting a claim. The revision also substitutes "a negligent or wrongful act or omission" for "negligence" so that the claims presentation requirement will include a requirement that a claim be presented for any act or omission--negligent or intentional--for which the State may be liable.

3. Section 643. The amendment deletes the time requirement for presenting a claim--this being covered in new Article 5. The words "whichever is later" at the end of the section are intended to reflect existing law but will clarify an ambiguity in the section.

4. Section 644. This section is repealed. Section 643 as amended covers all claims.

5. New Article 5. This new article covers the time and manner of presenting claims against the State. It is consistent with the time and manner of presenting claims against local public entities (as those provisions are recommended to be revised in the draft statute). The following is a section by section analysis of the new article. No discussion of policy is presented here--these provisions being the same in substance as the provisions ~~relating~~ to local public entities. Any changes made in the provisions relating to local public entities should be also made in the comparable provisions in Article 5.

Section 660. This section specifies the application of the new article.

Section 661. This section is an exact duplicate of Section 711 relating to the contents of a claim against a local public entity.

Section 662. This section is an exact duplicate (except for references to State or board) of Section 712 relating to local public entities.

Section 663. This section is an exact duplicate (except for references to the board) of Section 713 relating to local public entities.

Section 664. This section is comparable to Section 714 relating to local public entities.

Section 665. This section is comparable to Section 715 relating to local public entities. The policy reflected in this section should be considered in connection with changes made in Section 715 rather than in connection with this section. Changes made in policy in Section 715 should be reflected in this section.

Section 666. This section is comparable to Section 716 relating to local public entities. The policy reflected in this section should be considered in connection with the changes made in Section 716 rather than in connection with this section. Changes made in the policy in Section 716 should be reflected in this section.

Section 667. This section is a duplicate in substance of Section 705. It appears that a provision like Section 705 should be provided for the State.

Section 646. This section is repealed. The provisions in Section 666 will cover the matter dealt with in Section 646. The consultant strongly urged the repeal of Section 646.

Section 710. This is the basic section of the local public entity claims statute. The local public entities claims statute, as introduced in 1959, provided for a mandatory waiting period between the time of presentation of the claim and the time of filing of suit, the theory being that a public entity should have a period of time in which to consider a claim during which it was not under the necessity of answering the complaint. Hence, the statute provided that no suit could be brought until a claim was presented and rejected. During the course of the various amendments to the bill, the requirement that no suit could be brought until after the claim was rejected was deleted; but the prohibition against bringing an action until after presentation of the claim was left.

As it now exists, the only purpose served by the local public entities claim statute is to provide prompt notice of the claim to permit early investigation of the facts and to provide opportunity to repair or remedy the condition that gave rise to the claim. The statute is not

designed to provide the public entity with an opportunity to consider the claim before an action is brought, for an action can be brought immediately after the claim is presented. In the light of this change of purpose, the requirement of presentation of a claim before suit may be brought no longer serves any purpose. It merely imposes a technical requirement as to the order in which the claim and complaint must be filed. The staff does not believe that a cause of action should be lost if the claimant visits the superior court clerk's office to file his complaint before he visits the auditor's office to present his claim.

Moreover, for the same reasons that motivated the Commission in the rescission study to provide that service of a pleading was notice of rescission, the staff recommends that the service of a complaint within the time prescribed for presenting a claim should be considered to be compliance with the local public entities claim statute. The complaint gives the necessary notice that is the only reason for having the local entity claims statute.

In contrast to the local entity claims statute, the statute relating to presenting claims against the State is designed to provide the State with an opportunity to consider and investigate the claim before having to answer a complaint. In fact, this is the primary purpose of the existing State claims statute since in most cases the date fixed for presenting the claim is two years after the cause of action accrued--hardly the prompt notice needed to investigate the merits of the claim and to take action to remedy the condition that gave rise to the claim. Accordingly, the requirement that a claim be presented before an action can be brought against the State should be retained.

Section 715. The amendment made to this section extends the time for presenting a claim on a cause of action arising under Section 17001 of the Vehicle Code to one year. Such a claim is presently required to be presented within 100 days after accrual of the cause of action. The Commission approved this policy change at its March 1962 meeting.

For your information, Vehicle Code Section 17001 provides:

17001. Any public agency owning any motor vehicle is responsible to every person who sustains any damage by reason of death, or injury to person or property as a result of the negligent operation of the motor vehicle by an officer, agent, or employee or as the result of the negligent operation of any other motor vehicle by any officer, agent, or employee when acting within the scope of his office, agency, or employment. The injured person may sue the public agency in any court of competent jurisdiction in this State in the manner directed by law.

Section 716. Section 716 relates to the presentation of a claim after the time specified for presentation has expired. It should be noted that the petition to present a late claim must be filed within a reasonable time, not to exceed one year, after the time specified in Section 715 has expired. Subdivision (a) reflects the Commission policy decision made at the March 1962 meeting that a claimant should be able to present a late claim where he failed to file because of mistake, inadvertence or excusable neglect and the late filing will not unduly prejudice the public entity.

Subdivision (b) has not been approved by the Commission. It would permit the filing of a late claim--even where the entity can show prejudice--if the claimant is a minor, physically or mentally incapacitated or dead. Under these circumstances it would appear that the claimant should be permitted to file a late claim even though the entity is prejudiced thereby. The claims presentation requirement, designed to

provide prompt notice, should not deprive a person of his cause of action if he could not under the circumstances reasonably be expected to file a claim. The cases listed in subdivision (b) are cases where the claimant could not reasonably be expected to file a claim.

Subdivision (c) was approved in principle providing the entity would not be prejudiced by the late filing at the March meeting.

This situation would be covered by subdivision (a). Specific language (omitting the showing of no prejudice) is presented here for consideration by the Commission since there was some support for this principle at the March meeting.

Section 717. The amendment to Section 717 is designed to make clear that a local public entity may compromise a disputed claim.

Section 720. This section is revised to grant the power to compromise and settle a suit. Such authority is only, at most, conferred by implication under Section 720 as it now reads.

Sections 729, 731 and 732. These sections authorize the establishment of a claims board and also would permit a local public entity to authorize an officer or employee to allow, compromise or settle claims of less than \$1,000 or such lesser amount as the public entity directs.

Section 53055. This section, part of the statute relating to dangerous or defective conditions of public property, should be repealed. The same authority is conferred by Sections 717 and 720 of the draft statute.

Chapter 3 (Sections 800-803). This chapter is a new chapter relating to the presentation of claims against public officers and employees. The chapter is designed to prevent suit against a public

officer or employee unless the right to sue the public entity has been preserved by presenting a timely claim to the public entity. The Commission's 1961 recommendation relating to presentation of claims against public officers and employees was rejected by the Legislature, primarily because of the view that a public officer should not remain subject to suit after the right to bring an action on the same liability against the public entity was lost. Note the exceptions provided in subdivision (b) of Section 801.

Section 701. This is an obsolete section and should be repealed.

SEC. 17. An effective date provision that makes the act applicable only to causes of action that accrue on or after its effective date.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

4/10/62

DRAFT STATUTE

An act to add Article 5 (commencing with Section 660) to Chapter 1 of Division 3.5 of Title 1 of, and to amend Sections 621, 641, 643, 710, 715, 716, 717 and 720 of, and to add Sections 729, 731 and 732 to, and to repeal Chapter 3 (commencing with Section 800) of Division 3.5 of Title 1 of, and to add Chapter 3 (commencing with Section 800) to Division 3.5 of Title 1 of, and to repeal Sections 644, 646, 701 and 53055 of, the Government Code, relating to claims against public entities and public officers and employees.

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

SECTION 1. Section 621 of the Government Code is amended to read:

621. Any person having a claim against the State, the settlement of which is not otherwise provided for by law, shall present it to the board [~~at least four months before the meeting of the Legislature, accompanied by a statement showing the facts constituting the claim, and verified in the same manner as complaints in civil actions~~] in accordance with Article 5 (commencing with Section 660) of this chapter. Notice of the time and place of hearing on the claim shall be mailed to the claimant at least 15 days prior to the date set for final action by the board.

SEC. 2. Section 641 of the Government Code is amended to read:

641. Any person who has a claim against the State (1) on

express contract, (2) for ~~[negligence-]~~ a negligent or wrongful act or omission or (3) for the taking or damaging of private property for public use within the meaning of Section 14 of Article I of the Constitution, shall present the claim to the board in accordance with ~~[Section 621]~~ Article 5 (commencing with Section 660) of this chapter. If the claim is rejected or disallowed by the board, the claimant may bring an action against the State on the claim and prosecute it to final judgment, subject to the conditions prescribed by this article.

SEC. 3. Section 643 of the Government Code is amended to read:

~~643. [A claim arising under Sections 17000 to 17003, inclusive, of the Vehicle Code shall be presented to the board within one year after the claim first arose or accrued.]~~ An action on ~~[such]~~ a cause of action for which Section 621 or 641 requires a claim to be presented shall be brought either within the time prescribed by the Code of Civil Procedure within which such an action may be brought or within six months after the claim is rejected or disallowed in whole or in part, whichever is later.

SEC. 4. Section 644 of the Government Code is repealed.

~~[644. --A claim not arising under Sections 17000 to 17003, inclusive, of the Vehicle Code shall be presented to the board within two years after the claim first arose or accrued. --An action on such a claim shall be brought within six months after the claim is rejected or disallowed in whole or in part.]~~

SEC. 5. Article 5 (commencing with Section 660) is added to Chapter 1 of Division 3.5 of Title 1 of the Government Code, to read:

ARTICLE 5

Time and Manner of Presenting Claims

660. This article applies to claims presented to the board under Section 621 or 641.

661. A claim shall be presented by the claimant or by a person acting on his behalf and shall show:

- (a) The name and post office address of the claimant;
- (b) The post office address to which the person presenting the claim desires notices to be sent;
- (c) The date, place and other circumstances of the occurrence or transaction which gave rise to the claim asserted;
- (d) A general description of the indebtedness, obligation, injury, damage or loss incurred so far as it may be known at the time of presentation of the claim; and
- (e) The amount claimed as of the date of presentation of the claim, together with the basis of computation thereof.

The claim shall be signed by the claimant or by some person on his behalf. Claims for supplies, materials, equipment or services need not be signed by the claimant or on his behalf if presented on a billhead or invoice regularly used in the conduct of the business of the claimant.

A claim may be amended at any time, and the amendment shall be considered a part of the original claim for all purposes.

662. If in the opinion of the board a claim as presented fails to comply substantially with the requirements of Section 661, the board may, at any time within 50 days after the claim is presented,

give written notice of its insufficiency, stating with particularity the defects or omissions therein.

Such notice may be given by mailing it to the address, if any, stated in the claim as the address to which the person presenting the claim desires notices to be sent. If no such address is stated in the claim, the notice may be mailed to the address, if any, of the claimant as stated in the claim.

The board may not take action on the claim for a period of 20 days after such notice is given. A failure or refusal to amend the claim shall not constitute a defense to any action brought upon the cause of action for which the claim was presented if the court finds that the claim as presented complied substantially with Section 661.

663. Any defense based upon a defect or omission in a claim as presented is waived by failure of the board to mail notice of insufficiency with respect to such defect or omission as provided in Section 662, except that no notice need be mailed and no waiver shall result when the claim as presented fails to state either an address to which the person presenting the claim desires notices to be sent or an address of the claimant.

664. (a) A claim may be presented to the board by:

(1) Delivering the claim to the office of the board in the State Capitol, Sacramento, within the period of time prescribed by Section 665; or

(2) Mailing the claim to the board at its office not later than the last day of such period.

(b) A claim shall be deemed to have been presented in compliance with this section even though it is not delivered or mailed as provided

in this section if it is actually received at the office of the board within the time prescribed.

665. (a) Except as provided in subdivision (b), a claim relating to a cause of action for death or for physical injury to the person or to personal property or growing crops shall be presented as provided in Section 664 not later than the one hundredth day after the accrual of the cause of action.

(b) A claim relating to a cause of action arising under Section 17001 of the Vehicle Code shall be presented as provided in Section 664 not later than one year after the accrual of the cause of action.

(c) A claim relating to any cause of action not included under subdivision (a) or (b) shall be presented as provided in Section 664 not later than one year after the accrual of the cause of action.

(d) For the purpose of computing the time limit prescribed by this section, the date of accrual of a cause of action to which a claim relates is the date upon which the cause of action accrued within the meaning of the applicable statute of limitations.

666. (a) The superior court of any county in which the Attorney General has an office shall grant leave to present a claim after the expiration of the time specified in Section 665 if the claimant failed to present a claim during such time through his mistake, inadvertence or excusable neglect unless the State establishes that it will be unduly prejudiced thereby.

(b) The superior court of any county in which the Attorney General has an office shall also grant leave to present a claim after the expiration of the time specified in Section 665 where no claim was presented during such time and where:

(1) Claimant was a minor during all of such time; or

(2) Claimant was physically or mentally incapacitated during all of such time and by reason of such disability failed to present a claim during such time; or

(3) Claimant died before the expiration of such time.

(c) The superior court of any county in which the Attorney General has an office shall also grant leave to present a claim after the expiration of the time specified in Section 665 if:

(1) The claimant failed to present a claim during such time to the State Board of Control but instead presented the claim within such time to an office, officer, employee, department, division, bureau, board, commission or agency of the State, or to a local public entity as defined in Section 700, or to an agency thereof;

(2) The claimant acted in good faith and exercised reasonable care in determining to whom the claim should be presented; and

(3) The claimant, promptly upon discovering that the claim should have been presented to the State Board of Control, made an application under this section for leave to present the claim to the board.

(d) Application for leave to present a claim under this section must be made by verified petition showing the reason for the delay. A copy of the proposed claim shall be attached to the petition. The petition shall be filed within the time prescribed by the Code of Civil Procedure within which an action on such claim may be brought or within a reasonable time, not to exceed one year, after the time specified in Section 665 has expired, whichever is the earlier time.

A copy of the petition and the proposed claim and a written notice of the time and place of hearing thereof shall be served on the board not less than 10 days before such hearing. The application shall be determined upon the basis of the verified petition, any affidavits in support of or in opposition thereto, and any additional evidence received at such hearing.

667. Any written agreement to which the State, or an office, officer, department, division, bureau, board, commission or agency of the State, is a party may include provisions governing the presentation, by or on behalf of any party thereto, of any or all claims arising out of or related to the agreement and the consideration and payment of such claims. A claims procedure established by an agreement made 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 claims than the time provided in Section 665, and that Section 666 is applicable to all such claims.

SEC. 6. Section 646 of the Government Code is repealed.

~~[646.---Claims-of-a-miner-or-insane-person-or-person-imprisoned
on-a-criminal-charge-or-undergoing-execution-of-sentence-of-a-criminal
court,-a-married-woman-if-her-husband-is-a-necessary-party-with-her
in-commencing-action-thereon,-or-an-incompetent-person-shall-be
presented-to-the-board-as-prescribed-by-this-article-within-two-years
after-the-disability-ceases.---An-action-on-such-a-claim-shall-be
brought-within-six-months-after-the-claim-is-rejected-or-disallowed
in-whole-or-in-part-by-the-board.]~~

SEC. 7. Section 710 of the Government Code is amended to read:

710. No suit for money or damages may be brought against a local public entity on a cause of action for which this chapter requires a claim to be presented until a written claim therefor has been presented to the entity in conformity with the provisions of this article.

The service of a pleading on a local public entity in a suit for money or damages on a cause of action for which this chapter requires a claim to be presented shall be deemed to be the presentation of the claim to the local public entity in conformity with the provisions of this article if the pleading is served within the time prescribed by Section 715.

SEC. 8. Section 715 of the Government Code is amended to read:

715. (a) Except as provided in subdivision (b), a claim relating to a cause of action for death or for physical injury to the person or to personal property or growing crops shall be presented as provided in Section 714 not later than the one hundredth day after the accrual of the cause of action.

(b) A claim relating to a cause of action arising under Section 17001 of the Vehicle Code shall be presented as provided in Section 714 not later than one year after the accrual of the cause of action.

(c) A claim relating to any ~~other~~ cause of action not included under subdivision (a) or (b) shall be presented as provided in Section 714 not later than one year after the accrual of the cause of action.

(d) For the purpose of computing the time limit prescribed

by this section, the date of accrual of a cause of action to which a claim relates is the date upon which the cause of action accrued within the meaning of the applicable statute of limitations.

SEC. 9. Section 716 of the Government Code is amended to read:

716. (a) The superior court of the county in which the local public entity has its principal office shall grant leave to present a claim after the expiration of the time specified in Section 715 if the claimant failed to present a claim during such time through his mistake, inadvertence or excusable neglect unless the entity against which the claim is made establishes that it will [not] be unduly prejudiced thereby[.] .

(b) The superior court of the county in which the local public entity has its principal office shall also grant leave to present a claim after the expiration of the time specified in Section 715 where no claim was presented during such time and where:

~~[(a)]~~ (1) Claimant was a minor during all of such time; or

~~[(b)]~~ (2) Claimant was physically or mentally incapacitated during all of such time and by reason of such disability failed to present a claim during such time; or

~~[(c)]~~ (3) Claimant died before the expiration of such time.

(c) The superior court of the county in which the local public entity has its principal office shall also grant leave to present a claim after the expiration of the time specified in Section 715 if:

(1) The claimant failed to present a claim during such time to the local public entity but instead presented the claim within such

time to an office, officer, employee, department, division, bureau, board, commission or agency of the State, or to a local public entity, or to an agency thereof;

(2) The claimant acted in good faith and exercised reasonable care in determining to whom the claim should be presented; and

(3) The claimant, promptly upon discovering the local public entity to which the claim should have been presented, made an application under this section for leave to present the claim to such entity.

(d) Application for [such] leave to present a claim under this section must be made by verified petition showing the reason for the delay. A copy of the proposed claim shall be attached to the petition. The petition shall be filed within a reasonable time, not to exceed one year, after the time specified in Section 715 has expired. A copy of the petition and the proposed claim and a written notice of the time and place of hearing thereof shall be served on the clerk or secretary or governing body of the local public entity not less than 10 days before such hearing. The application shall be determined upon the basis of the verified petition, any affidavits in support of or in opposition thereto, and any additional evidence received at such hearing.

SEC. 10. Section 717 of the Government Code is amended to read:

717. The governing body shall act on a claim in one of the following ways:

(a) If the governing body finds the claim is not a proper charge against the local public entity, it shall reject the claim.

(b) If the governing body finds the claim is a proper charge against the local public entity and is for an amount justly due, it shall allow the claim.

(c) If the governing body finds the claim is a proper charge against the local public entity but is for an amount greater than is justly due, it shall either reject the claim or allow it in the amount justly due and reject it as to the balance. If the governing body allows the claim in part and rejects it in part it may require the claimant, if he accepts the amount allowed, to accept it in settlement of the entire claim.

(d) If legal liability of the local public entity is disputed, the governing body may reject the claim or may compromise the claim. If the governing body compromises the claim, it may require the claimant, if he accepts the amount offered to settle the claim, to accept it in settlement of the entire claim.

Notice of any action taken under this section rejecting a claim in whole or in part shall be given in writing by the clerk, secretary or auditor of the local public entity to the person who presented the claim.

SEC. 11. Section 720 of the Government Code is amended to read:

720. ~~[Nothing-in-this-chapter-shall-prohibit]~~ Where legal liability of the local public entity is disputed, the governing body of ~~[a]~~ the local public entity ~~[from-compromising]~~ may compromise and settle any suit based on a cause of action for which this chapter requires a claim to be presented.

SEC. 12. Sections 729, 731 and 732 are added to Article 3 of Chapter 2 of Division 3.5 of Title 1 of the Government Code, to read:

729. As used in this article, "resolution" includes a charter provision, ordinance or resolution.

731. A local public entity may by resolution establish a claims board to perform such functions of the governing body of the public entity under this chapter as are prescribed by such resolution. The resolution may provide that, upon requisition of the claims board, the auditor or other fiscal officer of the local public entity shall cause a warrant to be drawn upon the treasury of the local public entity in the amount for which a claim has been allowed or compromised or settled.

732. A local public entity may by resolution designate an officer or employee of the local public entity who shall investigate or cause to be investigated claims against the local public entity for which the local entity may be liable and who is authorized to allow, compromise or settle such claims in lieu of and with the same effect as an allowance, compromise or settlement by the governing body of the local public entity if the amount allowed, compromised or settled does not exceed \$1,000 or such lesser amount as may be provided for in the resolution. Upon the requisition of such officer or employee, the auditor or other fiscal officer of the local public entity shall cause a warrant to be issued upon the treasury of the local public entity in the amount for which a claim has been allowed, compromised or settled.

SEC. 13. 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-samepremise.]~~

SEC. 14. Chapter 3 (commencing with Section 800) of Division 3.5 of Title 1 of the Government Code is repealed.

SEC. 15. Chapter 3 (commencing with Section 800) is added to Division 3.5 of Title 1 of the Government Code, to read:

800. Except as otherwise provided in this chapter, a claim need not be presented as a prerequisite to the commencement of an action against a public officer or employee to enforce his personal liability.

801. (a) Except as provided in subdivision (b), a cause of action against a public officer or employee for death, injury or damages resulting from any negligent or wrongful act or omission on the part of such officer or employee within the course and scope of his office or employment is barred unless a written claim for such death, injury or damages has been presented to the employing public entity in the manner and within the period prescribed by law as a condition to maintaining an action therefor against such public entity. A claim presented pursuant to Section 666 or 716 shall be deemed to have been presented within the period prescribed by law.

(b) A cause of action against a public officer or employee is not barred by this section if:

(1) The plaintiff pleads and proves that the public officer or employee acted or failed to act because of bad faith or malice;
or

(2) The plaintiff did not know or have reason to know within

the period prescribed by Section 665 or 715 as a condition to maintaining an action therefor against the employing public entity that the death, injury or damage was caused by an act or omission of a public officer or employee.

803. Any provision of a charter, ordinance or regulation heretofore or hereafter adopted by a local public entity which requires the presentation of a claim as a prerequisite to the commencement of an action against a public officer or employee to enforce his personal liability is invalid.

SEC. 16. Section 701 of the Government Code is repealed.

~~[701.--Until the adoption by the people of an amendment to the Constitution of the State of California confirming the authority of the Legislature to prescribe procedures governing the presentation, consideration and enforcement of claims against chartered counties, chartered cities and counties and chartered cities and against officers, agents and employees thereof, this chapter shall not apply to causes of action founded on contract against a chartered city and county or chartered city while it has an applicable claims procedure prescribed by charter or pursuant thereto.]~~

SEC. 17. This act applies only to causes of action that accrue on or after its effective date. Causes of action that accrued prior to the effective date of this act are not affected by this act but shall continue to be governed by the law applicable thereto prior to the effective date of this act. Nothing in this act shall be deemed to allow an action on, or to permit reinstatement of, a cause of action that was barred prior to the effective date of this act.