

Memorandum
6/5/62

Memorandum No. 27(1962)

Subject: Study No. 52(L) - Sovereign Immunity (Comprehensive Claims
Presentation Statute)

Attached (yellow sheets) is a draft statute that would provide one basic procedure for presenting claims to the State and to local public entities. The draft statute would also make a number of other changes recommended by the consultant or suggested by the Commission's staff.

Attached as Exhibit I (pink sheets) is an outline of Division 3.5. An examination of this exhibit will be helpful in understanding the effect of the amendments, repeals and additions we propose to make to Division 3.5 of the Government Code.

We suggest that you bring to the meeting the 1961 Cumulative Pocket Part to Volume 32 of West's Annotated California Codes (Government Code Sections 1 to 11999). Because of time limitations, we have not set out at length in the draft statute all the repealed sections. Moreover, you may want to refer to the statute sections that are not amended at the time we consider proposed amendments and repeals of particular sections.

Because of time limitations and because of the numerous policy decisions that are presented by the draft statute, we have not attempted to prepare a tentative recommendation on the claims statute. We plan to submit a tentative recommendation to the Commission for its approval at the July meeting of the Commission. We have, however, hastily prepared some general material which is set out below. We hope that

this material will be helpful to you in considering the draft statute. We may be able to use some of this general material in the tentative recommendation and for that reason the material is written in the form of a tentative recommendation. We would, therefore, appreciate your suggestions as to the content of the following material, especially matters not covered that you believe should be covered in the tentative recommendation. In addition, a careful study of the following general material will, we believe, be of material assistance to you in considering the attached draft statute.

Background

California statutes contain provisions that bar suit against public entities and public officers and employees unless a claim for damages is presented as prescribed by statute. The three general claims presentation procedures provided by California law (which are found in the Government Code) are: Sections 600 to 655 (claims against the State); Sections 700 to 730 (claims against local public entities); and Sections 800 to 803 (claims against public officers and employees). These provisions were enacted in 1959 upon recommendation of the California Law Revision Commission. The 1959 recommendation of the Commission resulted in the establishment of a uniform procedure governing presentation of claims against local public entities and in the repeal of at least 17⁴ separate claims procedures that formerly applied to various local public entities. In its 1959 report to the Legislature the Commission also recommended, and the Legislature enacted, statutes that reenacted without significant substantive change the claims presentation procedures previously applicable to claims against the State and to claims against public officers and employees.

In 1961 the Commission submitted a recommendation to the Legislature that all provisions requiring the presentation of claims as a prerequisite to suit against a public officer or employee be repealed. However, the legislation drafted to effectuate this recommendation was not adopted by the Legislature.

The Commission has concluded that the appropriate role for claims presentation procedures should be reconsidered in connection with the general problem of enlarged governmental tort liability. Despite widespread publicity and efforts directed toward dissemination of information about claims presentation requirements both before and after the adoption by the 1959 Legislature of the present local public entities claims statute, noncompliance with its requirements continues to provide a technical defense against determination of tort liability on the merits. To the extent that such technical defenses are not thoroughly justified by the objectives of the claims procedure, their continued existence in the future will tend to frustrate the purposes of whatever rules are ultimately adopted providing for governmental tort liability. On the other hand, to the extent that the existing claims statutes do not effectively implement the accepted objectives of the claims procedure, they may expose public entities to the dangers of unwarranted tort liability.

Recommendation

The Law Revision Commission makes the following recommendation concerning the claims presentation statutes:

Unified statutory treatment. In its 1959 recommendation, the Commission stated:

Claims statutes have two principal purposes. First, they give the governmental entity an opportunity to settle just claims before suit is brought. Second, they permit the entity to make an early investigation of the facts on which a claim is based, thus enabling it to defend itself against unjust claims and to correct the conditions or practices which gave rise to the claim.

The State claims presentation procedure, however, is not designed to provide the State with an opportunity to make a prompt investigation of the facts on which a claim is based, for a claim arising under Section 17000 of the Vehicle Code (negligent operation of motor vehicle by State personnel) may be presented within one year after the claim first arose or accrued and all other claims may be presented within two years after the claim first arose or accrued. Thus, the basic defect in the State claims procedure is that it fails to provide the State with prompt notice of the claim so that the State will have an opportunity to investigate the claim and correct the condition that gave rise to it. Since the Commission has tentatively recommended that the State be generally liable for dangerous conditions of State property, this defect becomes more serious for these are the cases where prompt notice of the claim is most often needed. The local public entities claims presentation statute, on the other hand, fails to provide the entity with an opportunity to settle just claims before suit is brought, for a person may file his complaint the same day he presents his claim to the public entity.

Moreover, another possible defect in the existence of the two different claims presentation procedures is that claimants, and possibly attorneys, may become confused as to which of the two claims provisions applies to a particular case. Thus, to the extent that this can be achieved, the procedure for presenting a claim to the State and to a

local public entity should be the same.

The Commission, therefore, recommends that the procedure applicable to the presentation of claims against the State and against local public entities be set forth in a single statutory enactment.

Requirement of prior rejection. The State claims presentation procedure provides the State with an opportunity to consider a claim before suit may be brought against the State on the claim. The Commission recommended in 1959 that this feature of the claims presentation procedure also be made applicable to claims against local public entities, but the statute as enacted permits the claimant to commence suit the same day he presents his claim to the local public entity. Commencement of an action on a claim before the public entity has had an opportunity to consider the claim defeats the basic policy of discouraging litigation. It may be true that the presentation of the claim gives adequate notice and opportunity for investigation but the existing law does not provide opportunity for negotiation and settlement prior to incurring the expense of litigation. Institution of a lawsuit not only obligates the claimant for attorney's fees and costs which will probably increase his minimum settlement figure, but frequently imposes a burden of needless annoyance and inconvenience to the public employees involved and to counsel for the local public entity in preparing and filing an answer within the relatively short time allowed. Much expense and inconvenience can be avoided with no great prejudice to the claimant when rejection of the claim is required before institution of an action against the public entity. A provision to this effect-- which would continue in effect this requirement of the State claims

presentation statute and change the local public entities claims statute to impose this requirement--is thus recommended.

Time for presentation of claim. It is recommended that a uniform filing time be prescribed for claims against the State and local public entities. Claims against local public entities for death or physical injury to persons, personal property or growing crops must now be presented within 100 days; but similar claims against the State are considered timely under the present law if presented within two years except for certain claims arising out of the operation of motor vehicles by State personnel which must be presented within one year. All other claims against local public entities must be presented within one year; but if against the State they may be presented within two years, except, again, for motor vehicle torts where the limit is one year.

Since the need for prompt investigation and opportunity to repair or correct the condition which gave rise to the claim would seem to be fully present in the case of the State--just as in the case of local public entities--the general claims presentation requirement should be designed to provide all public entities with prompt notice of the claim.

The Commission recommends, therefore, that the present filing times under the local public entities claims statute be made applicable to the State. One change should, however, be made in the present local entities claims filing times: Claims arising out of the operation of motor vehicles by public personnel which are now required to be filed within 100 days should be permitted to be filed within one year. It would seem that the purpose of the 100-day limit is to provide the public entity with prompt notice so that it may investigate

C the claim and correct or repair the condition which gave rise to it. In the case of a claim arising out of the operation of a motor vehicle by a public officer or employee, the 100-day notice does not appear to be necessary since the public entity can institute administrative procedures pursuant to which officers and employees involved in motor vehicle accidents will promptly report the accidents to their employers. The Commission has not been advised of any problems created by the one year presentation requirement for such claims that now exists under the State claims statute.

It is believed that this recommendation will improve the effectiveness of the State claims presentation procedures as a protection against unfounded tort litigation and, accordingly, will serve to moderate the financial impact of any enlargement of substantive tort liability.

C Relief for persons who could not reasonably have been expected to present a claim. Under the local public entities claims presentation statute, the statutory time limits (one hundred days for some claims; one year for all others) are applicable without regard for extenuating circumstances and without regard to whether the delay has frustrated the underlying purposes of the requirement, except in the relatively rare instances where such claims are made by persons who are minors, under a disability or representatives of deceased claimants. In these three exceptional cases, a late claim may be presented after judicial authorization upon a finding that the local public entity will not be "unduly prejudiced" thereby, but a petition for authority to present a late claim must be filed within a reasonable time, not to exceed one year from the time otherwise prescribed for filing the claim.

Since permission to present a late claim is required to be predicated on a finding of lack of prejudice to the entity, which finding ordinarily presupposes substantial evidence that the entity in fact had received adequate and prompt notice of the injury which forms the basis for the claim or that more prompt notice would not have improved its ability to make its defenses against the claim, no good reason is apparent why the same rule should not be made applicable to all claims. Since by hypothesis the entity will not be unduly prejudiced by late presentation where permitted, the continuation of the inflexible time limits in most cases will serve only to provide, as the Commission's research consultant's report indicates, a trap for the unwary and ignorant claimant. It is, therefore, recommended that the claimant be permitted to file his claim within one year after the cause of action on which the claim is based accrued if the claimant failed to file his claim through mistake, surprise, inadvertence or excusable neglect unless the public entity establishes that it will be unduly prejudiced by the late filing of the claim. The showing required of the claimant under this recommendation is the same as that required under Code of Civil Procedure Section 473 for relieving a party from a default judgment.

In cases where the claimant failed to file his claim within the 100-day period because he was a minor, under a disability or died within the 100-day period, the statute should permit the claim to be presented within one year after the cause of action accrued even though the public entity may be prejudiced by the late filing of the claim. Although as a general principle the public entity should be entitled

to prompt notice in order to have an opportunity to investigate the claim and correct or remedy the condition that gave rise to it, the Commission has concluded that, in these rare cases where it ordinarily would not be reasonable to expect the claimant to file a claim, the interest in requiring prompt notice should not be permitted to deprive the claimant or his personal representative of the cause of action even though the entity might be prejudiced by the late filing.

The existing procedure under the local entities claims statute requires a court proceeding to obtain leave to present a claim after the time prescribed. In many cases this is an unnecessary requirement. The Commission recommends, therefore, that the claimant or his representative be authorized to make application to the public entity to present the late claim. The Commission anticipates that the public entity will grant this application in the great majority of cases where the claimant meets the statutory requirements for presenting a late claim. Only if the public entity denies the application should a court proceeding be required.

The effect of the suggested changes can be summarized as follows: In any case where a claim is required to be presented within 100 days, the claimant will be entitled to present the claim within one year from the date the cause of action accrued if he shows that he failed to present the claim through mistake, surprise, inadvertence or excusable neglect unless the public entity establishes that it would be unduly prejudiced by the late filing. No provision is made for extending the time for presenting claims that are required to be filed within one year from the date the cause of action accrued.

In a case where the claimant is under a disability, he may file a late claim within one year of the date the cause of action accrued even though the public entity may be prejudiced thereby. Thus, the maximum period in any case for filing a claim against a public entity will be one year. This should be contrasted with the present law. Claims against the State must be filed within two years except for vehicle tort claims which must be filed within one year. But, in case of disability, the time for filing a claim against the State is extended until two years after the disability ceases. In the case of local public entities, in the rare cases where a late claim is permitted, the time limit is extended by existing law for one year beyond the time when the claim should have been filed, thus providing in some cases a maximum period of two years within which to present the claim.

Formal requisites of claim. The provision of the local public entities statute which specifies the contents of a claim should be made applicable to claims against the State. This will permit the claimant to determine from an examination of the statute the information he needs to set out in his claim.

The State now provides claim forms which vary in form according to the type of claim involved. To permit this practice to continue, public entities should be authorized to provide claim forms that require such information as the public entity specifies. The claimant, however, should be authorized to determine whether he will present a claim containing the information required by the statute or will use the form provided by the public entity.

A claim should be verified in the same manner as the complaint

in a civil action. Although Section 72 of the Penal Code makes the presentation of a false or fraudulent claim with intent to defraud a felony, the verification requirement may tend to insure the authenticity and truthfulness of claims. The State claims statute contains a verification requirement, but the local public entities claims statute does not. The verification requirement will not operate to defeat on technical grounds an otherwise meritorious claim since the defense of insufficiency of the claim is waived if the public entity fails to object to the lack of verification.

Time for official consideration and commencing action on claim.

In order to avoid troublesome problems as to the interrelationship between the statutes of limitation and the claims statute, a specific period should be allowed for official consideration of the claim--80 days-- and a claim should be deemed to be rejected as a matter of law at the end of that period in the absence of prior action by the public entity. The State claims statute does not provide any limitation on the period allowed for official consideration of the claim although it prohibits suit on the claim until it has been rejected or disallowed. This seems unfair to the claimant. The local public entities claims statute, on the other hand, does not provide any period of time for official consideration of the claim; the claimant is entitled to commence his action the same day he files his claim. As previously pointed out, this may result in unnecessary litigation.

In its 1959 recommendation, the Commission recommended that a period of 80 days be allowed for official consideration of a claim and that at the end of that period the claim shall be deemed to have been rejected if it has not been acted upon by the public entity.

This recommendation is again made, with the further recommendation that it apply to the State as well as local public entities.

Since the Commission recommends adoption of a general prior rejection requirement, a special period of limitations applicable to actions based on rejected claims should also be provided. This period should commence to run only upon actual or constructive rejection of the claim. In order to promote uniformity and avoid undue delay in a suit against a public entity, a relatively short period should be allowed for commencing suit after rejection regardless of the nature of the claim. The six-month period now provided in the State claims statute is recommended. The general statutes of limitations would thus have no application to actions against public entities.

Reduction of technical difficulties and resultant expense in handling of claims. Express statutory provision should be made to confer discretionary authority upon public entities to administratively settle and compromise tort claims even when liability is doubtful or uncertain. Present statutory law appears to authorize such compromise settlements by local public entities only by implication, and only when litigation has commenced. The proposed provision would permit public entities to use the same techniques of negotiation and compromise in doubtful cases that are utilized extensively by insurance companies in an effort to avoid ultimate legal warfare in court.

Local public entities should also be authorized to delegate permissive authority to specified officers or employees to settle administratively minor tort claims not exceeding \$1,000 or such lesser amount as the local public entity authorizes. This authorization

would make available to the larger local public entities, at their option, administrative procedures comparable to those which have been employed successfully by the Federal Government. Studies which have been made of these federal administrative tort claims procedures by competent scholars have emphasized their speed, simplicity of operation, inexpensiveness and general fairness in results reached. One of the principal advantages of the administrative settlement of tort claims on the federal level is the very substantial reduction in litigation that has resulted therefrom.

In addition, local public entities should be authorized to create claims boards to exercise such functions of the governing body of the public entity relating to the consideration and determination of claims as the public entity authorizes. This would make available to the larger local public entities, at their option, administrative procedures comparable to those used on the State level where the State Board of Control performs the function of considering and determining claims against the State.

Provisions designed to minimize the number of unmeritorious actions brought to trial. Section 647 of the Government Code provides that a plaintiff who seeks to bring an action against the State must post an undertaking in an amount to be determined by the court (with the minimum amount set at \$250) conditioned upon the payment of costs and a reasonable counsel fee to the State if he fails to recover judgment in the action. The section requires that such an undertaking be filed in all cases except those involving motor vehicle accidents. No statute exists that provides local public entities with a similar protection against unfounded litigation.

The Commission has concluded that insofar as Section 647 is designed to deter litigation-prone individuals from instituting unmeritorious actions, the provision is sound. The section should be revised, however, to make the undertaking discretionary with the public entity so that an undertaking will be required only in appropriate cases. If the plaintiff has a reasonable chance of success in his suit against the public entity, there seems to be no reason why he should be required to post an undertaking to pay costs and a reasonable attorney fee to the public entity. Accordingly, in order that public entities do not abuse the authority to require an undertaking, the Commission recommends that the public entity be required to pay costs and a reasonable counsel fee to the plaintiff if the public entity requires him to file an undertaking and the plaintiff recovers a judgment against the public entity.

A provision should also be added to the statute governing actions against public entities to provide that the amount of the attorney's fee that may be collected by the attorney for a person bringing an action against a public entity is subject to statutory limits. This provision is contained in a separate tentative recommendation but the statutory provision recommended in that recommendation should be inserted in an appropriate place in the comprehensive claims statute herein recommended.

Consent to suit against local public entities. The report of the Commission's research consultant indicates that there is a possible doubt whether a tort action may be brought against certain local public entities. A general provision providing that suit may

be brought against any public entity should be enacted to eliminate any doubt that might exist whether the rules of substantive liability that are ultimately enacted will be avoided on the technical ground that a particular local public entity is not subject to suit.

Actions against public officers and employees. The statutory provisions relating to presentation of a claim as a prerequisite to suit against a public officer or employee are the subject of a separate tentative recommendation. However, the provisions relating to actions against public officers and employees are an integral part of the general claims statutes and will be placed in the same general area of the Government Code. [Note, however, that provisions relating to actions against public officers and employees are contained in the attached draft statute.]

Summary of significant time limitations and other conditions under existing law and under the recommended statute. The following indicates the present variance between significant time limits and other conditions for the presentation of claims against the State and local public entities as compared to the recommendation of the Commission.

	<u>Local public entities</u>	<u>State</u>	<u>Commission Recommendation</u>
Claims for death or for injury to persons or personal property	Must be filed within 100 days	Timely if filed within 2 years (except vehicle torts--one year)	Must be filed within 100 days (except vehicle torts--one year)
All other claims	Must be filed within 1 year	Timely if filed within 2 years (except vehicle torts--1 year)	Must be filed within 1 year
Claim by person under disability	With court permission, may extend filing time up to one year after normal expiration if entity not "unduly prejudiced"	Filing period extended up to 2 years after removal of disability [which could total many years] even though entity may be prejudiced	Filing period may be extended to 1 year from date of accrual of cause of action even though entity may be prejudiced. Court permission is required only if public entity objects to late claim within 50 days of presentation
No claim filed because of mistake, surprise, inadvertence or excusable neglect	No extension of filing period	No extension of filing period	Filing period may be extended to 1 year from date of accrual of cause of action unless entity would be unduly prejudiced. Court permission to present is required if public entity objects to late claim within 50 days of presentation
Prior rejection before suit	No such requirement	Required--no time limit on official consideration	Required--80 day time limit on official consideration (based on Commission's 1959 recommendation)

	<u>Local Public Entities</u>	<u>State</u>	<u>Commission Recommendation</u>
Undertaking for costs and counsel fees of public entity	No such requirement	Required	Discretionary with public entity-- if required and plaintiff recovers judgment, public entity must pay plaintiff's costs and reasonable counsel fee
Verification of claim	Not required	Required	Required
Waiver of insufficiency of content of claim by failure to object	Provided--must object within 50 days from presentation of claim	Not provided	Provided--must object within 50 days from presentation of claim
Time to sue after rejection	Rejection not required--normal statute of limitations applies	Within six months from rejection in all cases (except vehicle cases-- six months or normal statute of limitations, whichever is later time)	Within six months from rejection in all cases

Proposed legislation

The following is a section by section analysis of the proposed legislation.

Section 621. This amendment makes claims presented under the section subject to the claims presentation and conditions governing actions which are prescribed in new Chapter 2.5 (commencing with new Section 750) and deletes overlapping requirements from this section.

This amendment raises a question for Commission consideration. Note the effect of the amendment. Under the section as it now reads there is no limitation on the authority of the State Board of Control to recommend to the Legislature the payment of claims even though such claims are not filed within the two-year period provided by law. The only effect of the two-year period is to prevent suit on the claim. The amendment will limit the authority of the board to recommending payment of claims only if they are filed within the period prescribed by the proposed statute--one year or 100 days, depending on the type of claim. Note that Section 621 applies to claims "the settlement of which is not otherwise provided for by law." We do not know what the practice of the State Board of Control under this section is.

Section 641. The amendment of this section makes clear that a claim must be filed as a condition to bringing an action on an intentional tort as well as a negligent tort. The amendment also makes clear that this section does not create tort liability--that such liability must be based on some other statute.

Section 642. The exceptions to the general rule prescribed by this section include the person upon whom the complaint is to be served,

and the applicable period for commencing the action. The section may be unnecessary.

Sections 643 and 644. These sections are superseded by new Section 767 (time for presentation of claims) and new Section 780 (time for commencement of suit).

Section 645. This section is superseded by new Section 781.

Section 646. This section is superseded by new Sections 768 to 772.

Section 647. This section is superseded by new Sections 784 and 785.

Section 652. This section is superseded by new Section 785.

Section 701. This section is obsolete.

Section 702. This section is unnecessary--See Section 23 of draft statute.

Section 704. This section is obsolete if the effective date of the draft statute is July 1, 1964. See Section 22 of draft statute.

Section 705. This is a technical adjustment.

Section 710. This section is replaced by new Section 760.

Section 711. This section is replaced by new Sections 761 and 763.

Section 712. This section is replaced by new Section 764.

Section 713. This section is replaced by new Section 765.

Section 714. This section is replaced by new Section 766.

Section 715. This section is replaced by new Section 767.

Section 716. This section is replaced by new Sections 768 to 772.

Section 717. This section is replaced by new Section 773.

Section 718. This section is replaced by new Section 781.

Section 719. This section is replaced by new Section 780.

Section 720. This section is replaced by new Section 786.

New Section 710. A great number of statutes in many different codes refer to the presentation of claims in the manner provided in "Chapter 2 of Division 3.5." The insertion of new Section 710 makes it unnecessary to amend all these other statutes.

Section 730. This is a technical amendment.

Section 731. This section permits a local public entity to establish a claims board. See previous general discussion for justification of this provision.

Section 732. This section permits a local public entity to authorize an officer, agent or employee to settle small claims. See previous general discussion for justification of this provision.

New Sections 750, 751 and 752. These sections provide necessary definitions. The definition of "local public entity" conforms to the definition applicable to other portions of the claims statute. See Section 700 (not contained in draft statute).

New Section 760. This section is based on repealed Section 710 but includes a prior rejection requirement. The prior rejection requirement is based on the 1959 recommendation of the Law Revision Commission.

New Section 761. This section is based on repealed Section 711 (local public entities). Compare with amended Section 621 (State).

New Section 762. This is a new Section the substance of which was recommended by the representative of the Department of Finance at the May meeting and approved by the Subcommittee at the May meeting. See general discussion for further justification of this section.

New Section 763. This section is based on repealed Section 711 (last paragraph).

New Section 764. This section is based on repealed Section 712.

New Section 765. This section is based on repealed Section 713.

New Section 766. This section is based in part on repealed Section 714 (local public entities). The portion relating to claims against the State is new. See general discussion for justification of new material.

New Section 767. This section is based primarily on repealed Section 715 (local public entities). The one-year time limit for vehicle torts under Section 17000 of the Vehicle Code is based on repealed Section 643 (State). Compare with repealed Sections 643 and 644 (State). See general discussion for justification of this section.

New Section 768. This is a new section the substance of which was suggested by the research consultant and the Department of Public Works at the May meeting and approved by the Subcommittee at the May meeting. It is designed to prevent unnecessary court proceedings. See general discussion for further justification of this section.

New Section 769. This section is based on repealed Section 715.

New Sections 770 and 771. These sections are new but they are based on the same principle that is contained in repealed Sections 712 (notice of insufficiency of claim) and 713 (waiver of defense of insufficiency of claim if notice of insufficiency not given within 50 days). See general discussion for justification of this section.

New Section 772. This section is based on repealed Section 716. See general discussion for justification of this section.

New Section 773. This section is based on repealed Section 717 (local public entities). Compare Section 623 (State claims under Vehicle Code Section 17000) and repealed Section 645 (State - action on portion

of claim).

New Section 774. This is a new section and is based generally on the 1959 recommendation of the Commission.

New Section 775. This is a new section and is based on the 1959 recommendation of the Commission. See general discussion for justification of this provision.

New Section 780. This is a new section and is based on repealed Sections 643 and 644 (State) and on the 1959 recommendation of the Commission.

New Section 781. This section is based on repealed Section 718 (local public entities). See Also repealed Section 645 (State).

New Section 782. This section is based on repealed Section 718 (last paragraph).

New Section 783. This section is taken from the 1959 recommendation of the Commission. It is a new section.

New Section 784. This section is based on repealed Section 647. See general discussion for justification of this section and change made in substance of language taken from Section 647.

New Section 785. This is a new section and is based on repealed Section 652. But see general discussion for justification of change made in language taken from Section 652.

New Section 786. This section is based on repealed Section 720.

New Section 787. This is a new section. See general discussion for justification of this section.

New Section 788. This is a new section and is recommended by the Subcommittee of the Commission which considered this matter at the May meeting.

Sections 800, 801 and 802. These sections are superseded by new Sections 800 to 802.

New Sections 800 to 803. These new sections provide that a claim need not be filed against a public officer, agent or employee but that suit against him is generally barred unless a claim was presented to the public entity.

New Section 804. This is designed to protect public personnel from unfounded litigation. It is similar to new Sections 784 and 785.

Section 53055. This is repealed as unnecessary. Note, however, that we propose to extend liability for dangerous conditions of public property to the State. Section 53055 is found in the existing statute on dangerous conditions. No provision in draft statute gives State power to compromise such actions.

SEC. 22. Effective date is July 1, 1964.

SEC. 23. Savings clause.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

DRAFT STATUTE

An act . . . relating to claims against public entities and public officers, agents 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 Chapter 2.5 (commencing with Section 750) of this division. 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 for which the State is otherwise made liable by statute 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~~] Chapter 2.5 (commencing with Section 750 of this division. If this 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 and by Chapter 2.5 (commencing

with Section 750) of this division.

SEC. 3. Section 642 of the Government Code is amended to read:

642. Except as otherwise provided in this article and in Chapter 2.5 (commencing with Section 750) of this division, the rules of practice in civil actions apply to all actions brought under this article and Chapter 2.5 (commencing with Section 750) of this division.

SEC. 4. Section 643 of the Government Code is repealed.

SEC. 5. Section 644 of the Government Code is repealed.

SEC. 6. Section 645 of the Government Code is repealed.

SEC. 7. Section 646 of the Government Code is repealed.

SEC. 8. Section 647 of the Government Code is repealed.

SEC. 9. Section 652 of the Government Code is repealed.

SEC. 10. Section 701 of the Government Code is repealed.

SEC. 11. Section 702 of the Government Code is repealed.

SEC. 12. Section 704 of the Government Code is repealed.

SEC. 13. Section 705 of the Government Code is amended to read:

705. The governing body of a local public entity may include in any written agreement to which the entity, its governing body, or any board or officer thereof in an official capacity is a party, 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. The written agreement

may incorporate by reference claim provisions set forth in a specifically identified ordinance or resolution theretofore adopted by the governing body. 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 ~~[715]~~ 767, and that ~~[Section 716-1a]~~ Sections 768 to 772, inclusive, are applicable to all such claims.

SEC. 14. Article 2 (commencing with Section 710) of Chapter 2 of Division 3.5 of Title 1 of the Government Code is repealed.

SEC. 15. Article 2 (commencing with Section 710) is added to Chapter 2 of Division 3.5 of Title 1 of the Government Code, to read:

Article 2. Presentment, Consideration and Enforcement of Claims.

710. Except as provided in Section 703, Chapter 2.5 (commencing with Section 750) applies to all claims for money or damages against local public entities.

SEC. 16. Section 730 of the Government Code is amended to read:

730. Claims against a local public entity for money or damages which are excepted by Section 703 from Articles 1 and 2 of this chapter, and which are not governed by any other statutes or regulations expressly relating thereto, shall be governed by the procedure prescribed in any charter, ordinance or regulation adopted by the local public entity. The procedure so prescribed may include a requirement that a claim be presented as a prerequisite to suit thereon, but may not require a shorter time for presentation of any claim than the time

provided in Section ~~[-715-of-this-code]~~ 767, and ~~[Section-716-of-this-code-shall-be]~~ Sections 768 to 772, inclusive, are applicable to all claims governed thereby.

SEC. 17. Sections 731 and 732 are added to Article 3 of Chapter 2 of Division 3.5 of Title 1 of the Government Code, to read:

731. A local public entity may establish a claims board to perform such functions of the governing body of the public entity under this chapter and Chapter 2.5 (commencing with Section 750) of this division as are prescribed by the local public entity. The local public entity 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 authorize an officer, agent or employee of the local public entity to allow, compromise or settle claims against the local public entity for which the local public entity may be liable 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 to be paid pursuant to such allowance, compromise or settlement does not exceed \$1,000 or such lesser amount as may be authorized by the local public entity. Upon the written order of such officer, agent 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. 18. Chapter 2.5 (commencing with Section 750) is added to Division 3.5 of Title 1 of the Government Code, to read:

CHAPTER 2.5 ACTIONS AGAINST THE STATE AND LOCAL PUBLIC ENTITIES

Article 1. Definitions

750. As used in this chapter, "public entity" includes the State and any local public entity.

751. As used in this chapter, "local public entity" includes any county or city and any district, local authority or other political subdivision of the State but ~~does not include the State or any office, officer, department, division, bureau, board, commission or agency~~ thereof claims against which are paid by warrants drawn by the Controller.

752. As used in this chapter, "board" means:

- (a) In the case of a local public entity, the governing body of the local public entity.
- (b) In the case of the State, the State Board of Control.

Article 2. Claim as Prerequisite to Suit

760. No suit for money or damages may be brought against a public entity on a cause of action for which Section 621 or 641 or 710 requires a claim to be presented until a written claim therefor has been presented to the public entity in conformity with the provisions of this article and has been rejected or disallowed in whole or in part.

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

- (1) The name and post office address of the claimant;
 - (2) The post office address to which the person presenting the claim desires notices to be sent;
 - (3) The date, place and other circumstances of the occurrence or transaction which gave rise to the claim asserted;
 - (4) 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
 - (5) The amount claimed as of the date of presentation of the claim, together with the basis of computation thereof.
- (b) The claim shall be verified in the same manner as a complaint in a civil action.

762. The board may provide forms specifying the information to be contained in claims against the public entity. If the board provides forms pursuant to this section, the person presenting a claim may, in his discretion, present his claim using the form provided by the board or may present his claim in the form prescribed by Section 761.

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

764. (a) If in the opinion of the board a claim as presented fails to comply substantially with the requirements of Section 761 and fails to comply substantially with the requirements established pursuant to Section 762, 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.

(b) 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.

(c) 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 761.

765. 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 764, 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.

766. (a) A claim may be presented to a local public entity by:

(1) Delivering the claim to the clerk, secretary or auditor thereof within the period of time prescribed by Section 767; or

(2) Mailing the claim to such clerk, secretary or auditor or to the governing body at its principal office not later than the last day of such period.

(b) A claim may be presented to the State by:

(1) Delivering the claim to an office of the State Board of Control within the period of time prescribed by Section 767; or

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

(c) 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 by the clerk, secretary, auditor or board of the local public entity, or is actually received at an office of the State Board of Control, within the time prescribed.

767. (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 766 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 766 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 766 not later than one year after the accrual of the cause of action.

768. Not later than one year after the accrual of the cause of action, an application may be made to the public entity for leave to present a claim that is required by Section 767 to be presented not later than the one hundredth day after the accrual of the cause of action. The application shall state the reason for the delay in presenting the claim and shall be verified in the same manner as a complaint in a civil action. A copy of the proposed claim shall be attached to the application.

769. For the purpose of computing the time limits prescribed by Sections 767, 768 and 772, 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.

770. At any time within 50 days after the application for leave to present a claim after the expiration of the time specified in Section 767 is made, the board may give written notice that the application is denied, stating with particularity the reasons for the denial.

Such notice may be given by mailing it to the address, if any, stated in the proposed claim as the address to which the person making the application 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.

771. If the board does not mail a notice of denial as provided in Section 770 within 50 days after the application for leave to present the claim is made, the proposed claim shall be deemed to have been presented timely, except that no notice need be mailed and the claim shall not be deemed to have been presented timely when the proposed claim fails to state either an address to which the person presenting the claim desires notices to be sent or an address of the claimant.

772. (a) As used in this section "superior court" means:

(1) In the case of a claim against a local public entity, the superior court of the county in which the local public entity has its principal office.

(2) In the case of a claim against the State, the superior court of any county in which the Attorney General has an office.

(b) The superior court shall grant leave to present a claim

after the expiration of the time specified in Section 767 where the application to the board under Section 768 was made within a reasonable time not to exceed one year after the accrual of the cause of action and:

(1) The failure to present the claim was through mistake, inadvertence, surprise or excusable neglect unless the public entity against which the claim is made establishes that it will be unduly prejudiced thereby; or

(2) The claimant was a minor during all of the time specified in Section 767 for the presentation of the claim; or

(3) The 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

(4) The claimant died before the expiration of such time.

(c) Application to the superior court for leave to present a claim under this section must be made by a petition verified in the same manner as a complaint in a civil action showing the reason for the delay. A copy of the proposed claim shall be attached to the petition. The petition shall be filed within 50 days after notice of denial of the application to the board is mailed pursuant to Section 770. A copy of the petition and the proposed claim and a written notice of the time and place of hearing thereof shall be served (1) on the clerk or secretary or board of the local public entity if the claim is against a local public entity, or (2) on the State Board of Control or its secretary if the claim is against the State, not less than 10 days before the 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.

773. The board shall act on a claim in one of the following ways:

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

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

(c) If the board finds the claim is a proper charge against the 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 board 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 public entity is disputed, the board may reject the claim or may compromise the claim. If the board 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.

774. Written notice of any action taken under Section 773 rejecting a claim in whole or in part shall be given to the person who presented the claim. 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 notice 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.

775. If the board fails or refuses to act on a claim in the manner provided in Sections 773 and 774 within 80 days after the claim has been presented, the claim shall be deemed to have been rejected on the eightieth day.

Article 3. Actions Against Public Entities

780. Any suit brought against a public entity on a cause of action for which Section 621, 641 or 710 requires a claim to be presented must be commenced within six months after the date of rejection of the claim.

781. Where Section 621, 641 or 710 requires that a claim be presented to the public entity and a claim is presented and action thereon is taken by the board:

(a) If the claim is allowed in full and the claimant accepts the amount allowed no suit may be maintained on any part of the cause of action to which the claim relates.

(b) If the claim is allowed in part and the claimant accepts the amount allowed, no suit may be maintained on that part of the cause of action which is represented by the allowed portion of the claim.

(c) If the claim is allowed in part no suit may be maintained against such public entity on any portion of the cause of action where, pursuant to a requirement of the board to such effect, the claimant has accepted the amount allowed in settlement of the entire claim.

782. Nothing in this chapter shall be construed to deprive a claimant of the right to resort to writ of mandamus or other proceeding against the public entity or the board or any officer of the public entity to compel it or him to pay the claim when and to the extent that it has been allowed.

783. Except as provided in Section 776, when suit is brought against a public entity on a cause of action for which Section 621 or 641 or 710 requires a claim to be presented, neither the amount set forth in a claim relating thereto or any amendment of such claim nor any action taken by the board on such claim shall constitute a limitation upon the amount which may be pleaded, proved or recovered.

784. At any time after the filing of the complaint in any action against a public entity, except an action based upon a claim arising under Section 17000 of the Vehicle Code, the public entity may serve and file a demand that the plaintiff shall file an undertaking in such sum, but not less than \$250, as a judge of the court shall fix, with two sufficient sureties, to be approved by a judge of the court. The undertaking shall be conditioned upon payment by the plaintiff of all costs incurred by the public entity in the suit, including a reasonable counsel fee to be fixed by the court, if plaintiff fails to recover judgment in the action. Within 20 days after service of the demand, the plaintiff shall file an undertaking as required in this section or the action shall be dismissed.

785. (a) If judgment is rendered for the plaintiff in an action against a public entity, it shall be for the legal amount actually found due from the public entity to the plaintiff, with legal interest from the time the claim or obligation first arose or accrued, and except as otherwise provided in subdivision (b) without costs.

(b) If judgment is rendered for the plaintiff and the public entity required the plaintiff to file an undertaking pursuant to Section 784, the public entity shall also pay to the plaintiff all costs incurred by the plaintiff in the suit, including a reasonable counsel fee to be fixed by the court.

786. Where legal liability of the public entity or the amount of such liability is disputed, the board or any person authorized by it may compromise and settle any suit based on a cause of action for which Section 621, 641 or 710 requires a claim to be presented.

787. A public entity may sue and be sued.

788. Nothing in this chapter is intended to impose liability upon a public entity unless such liability otherwise exists.

SEC. 19. Chapter 3 (commencing with Section 800) of Division 3.5 of Title 1 of the Government Code is repealed.

SEC. 20. Chapter 3 (commencing with Section 800) is added to Division 3.5 of Title 1 of the Government Code, to read:

Chapter 3. Actions Against Public Officers and Employees

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, agent or employee to enforce his personal liability.

801. (a) Except as provided in subdivision (b), a cause of action against a public officer, agent or employee for death, injury or damages resulting from any negligent or wrongful act or omission in the scope of his office, agency or employment is barred if an action against the public entity for such death, injury or damages is barred because of the failure to present a written claim to the public entity.

(b) A cause of action against a public officer, agent or employee is not barred by this section if the plaintiff pleads and

proves that he did not know or have reason to know with the period prescribed by Section 767 for the presentation of a claim to the employing public entity as a condition to maintaining an action therefor against the employing public entity that the death, injury or damage was caused by a negligent or wrongful act or omission of a public officer, agent or employee.

802. 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, agent or employee to enforce his personal liability is invalid.

803. At any time after the filing of the complaint in any action against a public officer, agent or employee for money or damages based on an alleged negligent or wrongful act or omission in the scope of his office, agency or employment, the defendant may serve and file a demand that the plaintiff shall file an undertaking in such sum, but not less than \$250, as the judge of the court shall fix, with two sufficient sureties, to be approved by a judge of the court. The undertaking shall be conditioned upon payment by the plaintiff of all costs incurred by the defendant in the suit, including a reasonable counsel fee to be fixed by the court, if plaintiff fails to recover judgment in the action. Within 20 days after service of the demand, the plaintiff shall file an undertaking as required in this section or the action shall be dismissed.

If the defendant requires that the plaintiff file an undertaking pursuant to this section and the plaintiff recovers a judgment in the

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action, the defendant shall be liable to the plaintiff for all costs incurred by the plaintiff in the suit, including a reasonable counsel fee to be fixed by the court.

SEC. 21. 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.]

SEC. 22. This act takes effect on July 1, 1964.

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SEC. 23. 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.

EXHIBIT I

Note: Unless otherwise indicated, no change is made in the sections listed below. If an existing section is amended, this is indicated after the section title. If a section is repealed, the section number and title are in strikeout type. If the section is new, it is underlined.

DIVISION 3.5

CLAIMS AGAINST THE STATE, LOCAL PUBLIC ENTITIES AND OFFICERS AND EMPLOYEES

CHAPTER 1. CLAIMS AGAINST THE STATE

Article 1. General

- 600. Board, definition.
- 601. Claims exempt from article and section 13920.
- 602. Presentation to controller; form and manner.
- 603. Audit.
- 604. Approval; drawing of warrant.
- 605. Disapproval; filing with board.
- 606. Reconsideration of rejected claim.
- 607. Appeal to board.
- 608. Appeal to legislature; filing of notice; transmission of papers.
- 609. Claim by federal agency against credits owing by state.

Article 2. Filing with State Board of Control

- 620. Presentation and audit; approval; transmission to legislature.
- 621. Time of presenting claims; statement; notice of hearing. [AMENDED]
- 622. Examination and adjustment; evidence; report to legislature.
- 623. Claims under Vehicle Code Sections 17000 to 17003; allowance and payment.
- 624. Denial of claims covered by insurance.
- 625. Construction of article.

Article 3. Proceedings to Determine Constitutionality

- 630. Omnibus claim appropriation, definition.
- 631. Submission of claim covering full amount of omnibus claim appropriation.
- 632. Withholding payment of questioned portion of omnibus claim appropriation; notice to joint legislative budget committee.
- 633. Advice of committee; institution of proceedings to compel controller to issue warrant for balance of appropriation.
- 634. Decision of committee to reconsider questioned portion of appropriation; proceedings to compel payment.

Article 4. Actions

- 640. Inapplicability of article to certain actions.
- 641. Actionable claims; presentation to board; authority to sue on rejected claim. [AMENDED]
- 642. Rules of practice. [AMENDED]
- ~~643. Time to present and sue on claim under Vehicle Code Sections 17000 to 17003.~~
- ~~644. Time to present and sue on claim not arising under Vehicle Code Sections 17000 to 17003.~~
- ~~645. Action on portion of claim.~~
- ~~646. Time to present and sue on claim of person under disability.~~
- ~~647. Undertaking; amount.~~
- 648. Actions for taking or damaging private property; work done by department of public works; service of summons; defense by department.
- 649. Service of summons generally; defense by attorney general.
- 650. Actions for taking or damaging private property; work done by department of water resources; service of summons; defense.
- 651. Place of trial.
- ~~652. Judgment for plaintiff.~~
- 653. Payment of judgment on claim arising under Vehicle Code Sections 17000 to 17003.
- 654. Payment of other judgments.
- 655. Report of judgments to legislature.

CHAPTER 2. CLAIMS AGAINST LOCAL PUBLIC ENTITIES

Article 1. General

- 700. "Local public entity" defined.
- ~~701. Applicability of chapter.~~
- ~~702. Prospective application.~~
- 703. Exceptions from articles 1 and 2.
- ~~704. Compliance with procedure established by other statutes.~~

~~charters or ordinances as satisfying requirements.~~
705. Agreement of governing body establishing claims procedure.
[AMENDED]

Article 2. Presentation, Consideration and Enforcement of Claims.

~~710.--Necessity-of-written-claim.~~
~~711.--Contents.~~
~~712.--Notice-of-insufficiency;-time-for-action-by-governing~~
~~body;-substantial-compliance.~~
~~713.--Waiver-of-defenses.~~
~~714.--Manner-of-presentation-of-claims.~~
~~715.--Time-for-presentation-of-claim;-accrual-of-cause-of~~
~~action.~~
~~716.--Presentation-of-claim-after-expiration-of-time;-grounds.~~
~~717.--Action-by-governing-body.~~
~~718.--Suit-against-local-public-entity.~~
~~719.--Limitations.~~
~~720.--Compromise-of-suits.~~
710. Presentment, consideration and enforcement of claims.

Article 3. Claims Procedures Established by Local Public Entities.

730. Procedure for claims exempted from Articles 1 and 2;
adoption by local public entity; time for presentation
of claims. [AMENDED]
731. Local claims board.
732. Authorizing officer, agent or employee to settle small
claims.

CHAPTER 2.5. ACTIONS AGAINST THE STATE AND LOCAL PUBLIC ENTITIES

Article 1. Definitions.

750. "Public entity."
751. "Local public entity."
752. "Board."

Article 2. Claims as Prerequisite to Suit.

760. Claim as prerequisite to suit.
761. Contents of claim.
762. Claim forms provided by public entity.
763. Amendment of claim.
764. Notice of insufficiency of claim.
765. Waiver of defense of insufficiency.
766. Manner of presentation.
767. Time for presentation.
768. Application to public entity to present late claim.
769. Computation of date of accrual of cause of action.
770. Notice that application denied.
771. Waiver of defense that claim not timely filed.

772. Application to superior court for leave to present late claim.

773. Action of board on claim.

774. Notice of rejection of claim.

775. When a claim deemed to be rejected.

Article 3. Actions Against Public Entities.

780. Time for commencement of suit.

781. When suit against public entity barred.

782. Proceedings to compel payment of allowed claim.

783. Contents of claim not admissible as evidence in suit.

784. Undertaking by plaintiff.

785. Judgment for plaintiff.

786. Compromise and settlement to suit.

787. Suit by or against public entity.

788. Chapter does not create liability.

CHAPTER 3. ACTIONS AGAINST PUBLIC OFFICERS AND EMPLOYEES

~~800.-- Definitions.~~

~~801.-- Time for presenting claim; verification; filing.~~

~~802.-- Cause of action against employee barred unless claim presented to employing entity.~~

800. Presentation of claim not required.

801. Action against public officer or employee barred if claim not presented to public entity; exception.

802. Local regulations requiring presentation of claim invalid.

803. Undertaking by plaintiff.

SEC. 22. Effective date.

SEC. 23. Saving clause.