#52 3/15/65

First Supplement to Memorandum 65-12

Subject: Study No. 52(L) - Sovereign Immunity

Attached hereto is a revision of the Recommendation relating to Sovereign Immunity suggested by the Chairman for the Commission's consideration. His principal effort was to produce a shorter document which might be thought substantially sufficient.

Respectfully submitted,

John H. DeMoully,
Executive Secretary

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

RECOMMENDATION

RELATING TO

SOVEREIGN IMMUNITY

Number 8--Revisions of the Governmental Liability Act:

I. Claims and Actions Against Public Entities and Public Employees

II. Liability of Public Entities for Ownership and Operation of Motor Vehicles

January 1965

CALIFORNIA LAW REVISION COMMISSION
School of Law
Stanford University
Stanford, California

LETTER OF TRANSMITTAL

January 1965

To HIS EXCELLENCY, EDMUND G. BROWN
Governor of California
and to the Legislature of California

The California Law Revision Commission was directed by Resolution Chapter 202 of the Statutes of 1957 to make a study to determine whether the doctrine of sovereign or governmental immunity in California should be abolished or revised. Pursuant to this directive, the Commission submitted a series of recommendations to the 1963 Legislature. The major portion of these recommendations became law.

The Commission has reviewed the legislation enacted in 1963 to determine whether any technical or clarifying changes should be made. As a result of this review, the Commission submits this recommendation.

At the request of the Commission, Professor Arvo Van Alstyne of the School of Law, University of California at Los Angeles, prepared a research report containing suggested changes that might be made in the 1963 legislation. His report was of substantial assistance in preparing this recommendation. Also at the request of the Commission, the Harvard Student Legislative Research Bureau prepared a draft statute and explanatory memorandum on Liability of Public Entities in California for Damage Caused by Vehicles of Which They are Owners or Bailees. This material also was of assistance to the Commission in preparing this recommendation.

Respectfully submitted,

JOHN R. McDONOUGH, JR.
Chairman

RECOMMENDATION OF THE CALIFORNIA LAW

REVISION COMMISSION

relating to

SOVEREIGN IMMUNITY

Number 8--Revisions of the Governmental Liability Act

In 1963, upon the recommendation of the Law Revision Commission, the Legislature enacted a series of measures that dealt with the liability of public entities and their employees. This legislation was designed to meet the most pressing problems created by the decision of the California Supreme Court in Muskopf v. Corning Hospital District, 55 Cal.2d 211, 11 Cal. Rptr. 89, 359 P.2d 457 (1961).

The Commission reported in its recommendation relating to the 1963 legislation that additional work was needed and that the Commission would continue to study the subject of governmental liability. The Commission has reviewed the legislation enacted in 1963 and has concluded that a number of revisions should be made in this legislation.

Because of the recent enactment of this legislation and because additional time is needed in which to appraise its effect, the Commission makes no recommendation at this time in regard to the provisions of the 1963 legislation that relate to substantive rules of liability and immunity of public entities and public employees. The Commission plans to continue its study of this subject with a view to submitting at a later time its recommendations for needed changes. However, one aspect of the substantive law, the existing provisions of the Vehicle Code relating to liability arising out of ownership or operation of motor vehicles, is in need of clarification and is included in this recommendation. This subject is separately discussed below.

Claims and Actions Against Public Entities and Public Employees

The legislation enacted in 1963 also contained numerous procedural provisions relating to claims and actions against public entities and public employees. The Commission has studied these provisions in detail and recommends several changes designed to clarify the language, to implement more precisely certain policies, and to facilitate the use of the 1963 legislation. The Commission also recommends several significant changes in the existing law relating to claims and actions against public entities and public employees. These changes are indicated below.

1. The 1963 legislation permits the establishment of a claims procedure by agreement and, as to claims not governed by the statute, also authorizes the establishment of claims procedures by charter, ordinance, or resolution. The existing law contains certain minimum procedural limitations on claims procedures established by charter, ordinance, or resolution. The Commission recommends that these procedural limitations be clarified and, also, that similar procedural protection be provided for those procedures established by agreement. These minimum protections may be summarized as follows:

(a) The procedure may not require a shorter time for the presentation of a claim than 100 days after the accrual of the cause of action nor provide a longer time for board consideration than 45 days after the presentation of the claim (unless the time is extended by separate agreement).

(b) The procedure may not authorize the consideration, settlement, or payment of a claim by a claims board or commission or by a public employee contrary to the authority expressed in the 1963 legislation in Government Code Sections 935.2-935.6.

(c) The late claim procedure is made specifically applicable to any procedure governed by agreement or by charter, ordinance, or resolution.

(d) If presentation of a claim and action by the board is required by the procedure as a prerequisite to suit, the statute of limitations and the limitation on the scope of the action provided in the 1963 legislation is made applicable to such action.

2. The procedure prescribed by the 1963 legislation for obtaining judicial relief following denial of an application for leave to present a late claim has proved to be cumbersome and unnecessarily complex. The Commission recommends that this procedure be modified as follows:

(a) Following rejection of an application for leave to present a late claim, the injured person should be able to seek judicial relief directly by petitioning a court for an order dispensing with the necessity for filing a claim as a prerequisite to suit.

(b) A longer period of time should be permitted in which to seek judicial relief following denial of an application for leave to present a late claim. The 20 days presently provided should be changed to six months to coincide with the normal statute of limitations that would be applicable if the late claim were accepted procedurally but rejected on the merits.

(c) If the court makes an order excusing the failure to file a timely claim, suit on the claim should be permitted without the necessity of presenting a claim to the board since the conditions for judicial relief are the same as the conditions under which the board is directed to accept a late claim.

(d) In the case of a claim against the State, the petition for judicial relief under this procedure should be permitted to be filed in the same county in which an action on the claim could be brought, thereby making uniform the venue provisions for the petition proceeding and a suit on the cause of action.

3. Separate legislation enacted in 1963 requires that certain local public entities provide and maintain in a Roster of Public Agencies certain information regarding the agency that is needed to permit a person to comply with any applicable claims presentation procedures. The Commission recommends that this legislation be clarified so that:

(a) It will be clear that a claim filed in accord with the information contained in the Roster will be deemed sufficient presentation to the public entity notwithstanding the fact that the information contained in the Roster may not be entirely consistent with the actual facts.

(b) No claim need be filed if a public entity that is required by law to comply with the Roster requirements has failed to so comply within a specified time sufficient to permit an injured person to file a timely claim.

(c) Good and sufficient service of process may be made on a public entity if service is made in accord with the information supplied by the public entity in the Roster, and substituted service may be made on a public entity that fails to comply with the Roster requirements.

Liability of Public Entities for Ownership and Operation of Motor Vehicles

Sections 17000-17004 govern the liability of public entities for injuries arising out of the operation of motor vehicles. The meaning and effect of these sections is not clear in the light of the Governmental Liability Act enacted in 1963; in some respects, these sections are actually misleading. Clarifying legislation, therefore, is greatly needed. The most important features of the clarifying legislation recommended by the Commission are as follows:

1. Vehicle Code Section 17001 is amended to recognize that governmental liability may exist for intentional as well as negligent torts committed with

a motor vehicle. Such liability exists under Government Code Section 815.2. See VAN ALSTYNE, CAL. GOVT. TORT LIABILITY § 7.67 (Cal. Cont. Ed. Bar 1964).

2. Vehicle Code Section 17002 is repealed. This section, which grants public entities certain subrogation rights against public employees, is inconsistent with the policies expressed in the Governmental Liability Act and was probably repealed by implication by the enactment of the Governmental Liability Act. See VAN ALSTYNE, CAL. GOVT. TORT LIABILITY § 7.69 (Cal. Cont. Ed. Bar 1964).

3. Public entities are expressly subjected to the limited, secondary liability to which all motor vehicle owners are subject when a person operating a vehicle with the owner's consent negligently causes injury. It seems likely that such liability has existed since the abolition of the doctrine of governmental immunity by judicial decision and by the Governmental Liability Act. See VAN ALSTYNE, CAL. GOVT. TORT LIABILITY § 7.65 (Cal. Cont. Ed. Bar 1964).'

The legislation recommended by the Commission is set out below. It is divided into two separate bills, one dealing with recommended changes in the 1963 legislation relating to claims and actions against public entities and public employees and the other relating to the liability of public entities for ownership and operation of motor vehicles. A Comment follows each section of the proposed legislation to explain the purpose of the recommended revision.

Section 910

Comment. This amendment to Section 910 merely makes a technical correction in punctuation to clarify the relationship of subdivision (f) to the remaining subdivisions in this section.

Section 910.4

Comment. The last sentence in this section as originally enacted creates unnecessary confusion regarding the application of the doctrine of substantial compliance to claims submitted on a form prescribed by a public entity. For example, the claim form prescribed by the State Board of Control (2 CAL. ADMIN. CODE §§ 631, 632.5) requires certain information that is not explicitly required by Section 910 and, also, purports to require that the claim be verified.

Prior to the enactment of the 1963 legislation, lack of verification ordinarily was regarded as a fatal defect that could not be cured by the doctrine of substantial compliance. See, e.g., Peck v. City of Modesto, 181 Cal. App.2d 465, 5 Cal. Rptr. 482 (1960). Also, the omission of other required data sometimes was beyond cure by applying the doctrine of substantial compliance.

If applied literally, this section might result in a trap where a claimant failed to comply with the requirements of a particular form supplied by the public entity even though he fully complied with the requirements of Sections 910 and 910.2. This amendment gives full scope to the purpose and intent of the original act by making it clear that a claim presented on an officially prescribed form (such as the State Board of Control form) is sufficient if the information given substantially satisfies the requirements either of Sections 910 and 910.2 or of the form only--e.g., satisfies the statutory requirements even though it may not fully meet the requirements of the form itself (for example, lack of verification).

Section 911.4

Comment. The division of this section into two subdivisions is solely to facilitate the use of cross-references in Section 930.4 (added) and in Section 935 (amended) to refer to the late claim procedure set forth in this and several following sections.

Section 911.6

Comment. The amendment to subdivision (a) changes the time from 35 days to 45 days for the board to act on an application for leave to present a late claim. In addition to extending the time for board action an additional 10 days, the amendment brings consistency to the claims procedure by making uniform the time within which the board may act on a claim, an amended claim or an application for leave to present a late claim. See Section 912.4 (board has 45 days within which to act on a claim or amended claim). This amendment makes it easier for both practitioners and administrative officials to apply the time limits specified in the claims presentation procedures.

The amendment to subdivision (b) merely clarifies the fact that the person referred to in paragraphs (2), (3) and (4) is the person to whom the claims presentation procedure is directed. Since a claim may be presented by a person acting on behalf of another (see Section 910), it seems desirable to make entirely clear in this section the person to whom reference is made in subdivision (b). This change in language also is consistent with the language in Section 946.6 (added) which provides a new procedure for petitioning a court for relief from the claims presentation requirements in certain cases where specified conditions are met. See Section 946.6 and the Comment thereto.

Section 912

Comment. This section is repealed in favor of a new section (Section 946.6) that provides a simplified procedure for seeking judicial relief from the claims presentation procedures in certain cases where specified conditions are met.

Under the procedure prescribed in the original act, a claimant who failed to file a timely claim within the 100-day period required by Section 911.2 was required to present to the board (within a reasonable time not to exceed one year after the accrual of the cause of action) an application for leave to present a late claim as provided in Section 911.4. The board was directed to grant the application where the person required to present the claim met one of the conditions specified in subdivision (b) of Section 911.6. See Section 911.6. If the application for leave to present a late claim was denied or deemed denied pursuant to Section 911.6, the only remaining remedy was to petition the court under Section 912 for leave to present a late claim. If relief was granted pursuant to Section 912, the claim was deemed to have been presented to the board upon the day that the court granted leave to present the claim. Section 912.2.

Although the original procedure has the merit of giving a public entity an opportunity to consider a late claim on its merits, the resulting procedure is unnecessarily complex and confusing. For example, the court petition for leave to present a late claim must be filed within only 20 days after an application to the board is denied or deemed to be denied pursuant to Section 911.6. Unless the claimant receives specific notification of the grounds for the board's rejection (which would not occur in cases where the claim is deemed denied), he might well believe that he has six months within

which to seek judicial relief. See Section 945.6. In short, Section 912 provides such a short period of time within which to act as to constitute a trap for all but the most astute claimant.

The original procedure also creates substantial problems regarding venue in pursuing claims against the State. Section 912 provides that proper venue for the petition proceeding in actions against the State lies only in those counties in which the Attorney General maintains an office (Sacramento, San Francisco and Los Angeles). If relief is granted, however, and an action based on the claim is subsequently brought, the proper venue for the subsequent action is the county in which the injury occurred. See Section 955.2. This introduces unnecessary complexity to the trial of actions and requires legislative correction.

In all, the original procedure is unnecessarily burdensome on claimants and public agencies alike. Accordingly, Section 912 is repealed and a more simplified procedure for judicial relief is provided in new Section 946.6. For a discussion of how the new procedure would operate, see the Comment to Section 946.6.

Section 912.2

Comment. This amendment merely strikes the reference to the procedure specified in Section 912 because that procedure is superseded by the more simplified procedure set out in new Section 946.6. See the Comments to Section 912 (repealed) and Section 946.6 (added). The new procedure recommended in Section 946.6 eliminates the necessity of filing a claim with the public entity if the entity denies permission to file a late claim and the court excuses the claims presentation procedure as a prerequisite to suit; hence, no reference of any kind is necessary in this section.

Section 912.4

Comment. This amendment clarifies an ambiguity in the original section in regard to the expiration of the time within which a public entity by agreement might extend its time for consideration of a claim. This amendment makes it clear that an agreement extending the board's time to act on a claim, if made after the end of the 45-day period allowed by the act for board consideration, must be entered into before the action is commenced or before it is barred from commencement by the applicable statute of limitations (the six-month period allowed by Section 945.6 after rejection of the claim). In this respect, the amendment merely conforms this section to Section 913.2 which permits previously rejected claims to be reconsidered and settled before (but not after) they are barred by the applicable statute of limitations.

In addition to the desirability of conforming this section to the more specific time limits specified in Section 913.2, the amendment precludes the occurrence of unique problems in settlement negotiations and the disposition of litigation. For example, since reopening of a matter by the board necessarily requires a new period for board consideration, permitting a matter to be reopened by the board after an action based on the claim had been commenced might result in dismissal of the action for prematurity because the agreement for further consideration would nullify the previous rejection upon which the action must have been predicated. See Section 946 and the Comment thereto.

Section 915

Comment. The addition of subdivision (d) to this section is necessary to implement the purpose and intent of the 1963 legislation regarding the necessity for public agencies to file and maintain in a Roster of Public Agencies certain information regarding the agency. Section 945.5 (repealed) excused entirely the necessity of presenting a claim to any public agency failing to comply with the Roster requirements, yet the section was silent as to the effect to be given a claim presented in accord with the information filed in the Roster where the information in the Roster was incomplete, inaccurate, or for any other reason deviated from the actual facts. For example, Government Code Section 53051 requires a public agency to file a statement that contains, inter alia, the name and address of the agency's clerk or secretary. Section 915 requires a claim, amendment or application for leave to present a late claim to be presented to the clerk or secretary (or auditor) of a local public entity. The amendment to this section simply makes it clear that the presentation of a claim, amendment or application to the person named in the statement filed by the public entity in the Roster of Public Agencies constitutes sufficient presentation even if that person no longer is in fact the clerk or secretary of the public agency

Section 930

Comment. The amendments to Sections 930 and 930.2 are necessary to conform these sections to the language in Section 930.4 (added), which states in detail how the late claim procedure of Sections 911.4 to 912.2 applies to claims governed by the contractual procedures here authorized.

Section 930.2

Comment. See the Comment to Section 930.

Section 930.4

Comment. Section 930.4 is new. Its purpose is to spell out clearly the limitations on contractual claims procedures and to clarify the application of the late claim procedure so such claims. With one principal exception, the limitations specified in Section 930.4 follow the provisions of Section 935 which authorize local claims procedures to be prescribed by ordinance or charter for claims exempt from statutory procedures.

Section 935 forbids local claims procedures prescribed by ordinance or charter to require a presentation time of less than the 100-day or one-year period provided by Section 911.2. The two principal types of claims covered by the one-year claims presentation period specified in Section 911.2 are contract claims and claims for injury to real property. Since the contractual claims procedure applies to any claim "arising out of or related to the agreement," it is clear that at least some of the claims that may be the subject of the contractual claims procedures authorized under Sections 930 and 930.2 will be tort claims. Where the procedures for claims presentation are set by contract, as authorized by Sections 930 and 930.2, there is no good reason why claims presentation times of less than one year should not be permitted for these types of claims. In the interest of uniformity of policy and in order to prevent the setting of an excessively short presentation time by a "small print" clause in a contract form prepared by the public entity, the 100-day period specified in Section 911.2 is declared in this section to be a minimum period even for contractual claims procedures. Thus, all claimants will know that they always have at least 100 days in which to present a claim whether the claim is governed by the statutory rule of Section 911.2, by the contractual procedures specified in an agreement

with a public entity as authorized under Section 930 or 930.2, or by a local ordinance or charter provision adopted pursuant to Section 935.

Subdivision (b) is based on Section 935 without substantive change. This subdivision makes all claims subject to a uniform rule governing the period of time for their consideration and disposition.

Subdivision (c) is designed to prevent the frustration, by a claims procedure established by agreement, of the limitations on administrative claims settlements provided in Section 935.4 (limit of $5,000 for a local public entity in the absence of charter authority to exceed this amount) or Section 935.6 (limit of $1,000 for a state agency).

Subdivision (d) makes explicit exactly how the late claim procedure applies to contractual claims proceedings. As originally enacted, the statement in Section 935 that "Sections 911.4 to 912.2, inclusive, are applicable" involved problems of interpretation because each of those Sections is framed in terms of the time limits specified in Section 911.2. Subdivision (d) resolves these difficulties of interpretation in a manner consistent with the original intent of the 1963 legislation.

Comment. Section 930.6 is new. It is based in part on Section 935 which authorizes local claims procedures to be prescribed by ordinance or charter for claims exempt from statutory procedures. Its purpose is to clarify the applicability of the rules governing actions on claims governed by contractual claims procedures. Thus, the section makes clear the applicability of the six-month statute of limitations and of the general rules limiting suit on a claim to that portion of the claim rejected by the board and not waived by the claimant.

It seems clear that, under existing law, prior rejection of a claim before suit could be demanded as part of a contractual claims procedure. It is quite possible, however, that the six-month period of limitations does not apply (since Section 945.6 is in terms limited to claims governed by the statute) and it is equally possible that the limitations on the scope of an action as set out in Section 946 are inapplicable (since Section 946 is similarly restricted to claims covered by the statute). The ordinary statute of limitations would thus be applicable.

See Section 945.8. Application of the normal period of limitations might unduly extend the time within which suit can be brought because prior rejection of the claim marks the time for the commencement of the period within which to bring suit. The basic policy of limiting actions to those brought within six months after rejection of a claim seems applicable as well to contractual claims where prior rejection is a prerequisite to suit. Thus, in the interest of uniformity, it is appropriate to require adherence to the six-month rule in these cases. Similarly, when prior rejection is a procedural prerequisite, it seems best to require adherence to the same rule that limits suit to the rejected portion of the claim. The addition of this section will accomplish both purposes and make the procedure more nearly uniform for all claims.

Comment. The amendment to this section is designed to make applicable to claims procedures prescribed by local charter or ordinance provisions the same basic policies recommended for express incorporation into the act with respect to claims governed by contractual claims procedures. See Sections 930 and 930.2 (amended) and Sections 930.4 and 930.6 (added) together with their respective Comments. Together with Section 935, these sections will both clarify and make more uniform the law relating to claims and actions against public entities, since it will be clear that:

(1) All claims, whether governed by statute, contract procedures or local charter or ordinance provisions, are subject to not less than a 100-day presentation period.

(2) All claims will likewise be subject to a maximum period of 45 days during which the board may act unless the period for consideration is extended by agreement.

(3) If prior presentation and rejection of a claim is required as a prerequisite to commencing a suit, all claims will be subject to a uniform six-month period of limitations for commencement of the action.

(4) When the time for presentation of a claim is less than one year, all claims will be subject to the late claim procedures.

Section 935.2

Comment. Section 935.2 authorizes local public entities to establish a claims board to perform the functions of the governing body in passing on claims and late claim applications. Section 935.4 authorizes local public entities to establish claims commissions for exactly the same purpose as well as to delegate these functions to a claims officer. Thus, the two sections substantially overlap each other.

This unnecessary overlap between a claims "board" and a claims "commission" causes interpretative difficulties. Section 935.4 contains an express limitation of $5,000 on the authority to delegate settlement of claims except where a higher figure is authorized by a city or county charter approved by the voters. No such dollar limit is contained in Section 935.2. Hence, the amendment to these two sections to clarify their relationship does not in any way limit the authority of a public entity to delegate the claims settlement function to a claims board (or commission) established pursuant to Section 935.2, but merely restores the original intent of restricting the delegated authority of a public employee to compromise claims in excess of a specified dollar amount.

Section 935.4

Comment. See the Comment to Section 935.2 regarding the deletion of the reference to "commission" in this section. The remaining changes in this section are made to eliminate ambiguity in the first sentence regarding exactly what may be authorized by a charter provision and to conform the second sentence to the identical language and purpose specified in Section 935.2.

Section 943

Comment. The reference to "this part" includes the procedural provisions governing actions against public employees as well as actions against public entities. Yet, as enacted, this section only declares the provisions in question inapplicable to claims or actions against the university itself, thereby leaving in doubt the applicability (or inapplicability) of the provisions to claims and actions against university employees. The possible implication flowing from this ambiguity requires amendatory clarification. For example, it seems reasonably plausible that, as originally enacted, this section would permit an employee of the university to rely on the application to him of Sections 950.6 and 951.

Section 950.6 provides a six-month period for commencing an action on a claim following rejection of the claim. Although a claim is not required to be presented to the university as a condition to suit, a claimant might voluntarily present one or might present one in ignorance of the fact that the university is exempt from the claims presentation requirements. Whatever the reason, once a claim has in fact been presented, Section 950.6 appears to provide both a prior rejection requirement as a condition to suit and a six-month period of limitations.

Section 951 requires the posting by the plaintiff of an undertaking for costs in an action against a public employee when the employing public entity provides for the employee's defense and demands the undertaking. The university is under the same duty to provide a defense as every public entity. See Sections 995-996.6.

As originally enacted, Section 943 was unclear as to whether the provisions of Sections 950.6 and 951 applied to university employees, for those two

sections were drafted on the assumption that comparable procedures did apply to the defendant employee's employing public entity. The revised section precludes that assumption and makes it clear that Sections 950.6 and 951 do not apply to university employees.

Section 945.4

Comment. The amendment to this section directs attention to the exception to Section 945.4 that is stated in Sections 946.4 and 946.6 (added). See the Comments to the cited sections.

Section 945.5

Comment. Section 945.5 is replaced by a new subdivision added to Section 915 and by detailed provisions regarding suit on a claim that are stated in Sections 960-960.8. See the Comments to each of the cited sections.

Section 945.6

Comment. Although the imposition of a sentence to imprisonment in a state prison constitutes the operative fact making effective a loss of civil rights (see PENAL CODE § 2600), this section as enacted provided no standards for determining when failure to sue within a six-month period could be said to be "because" of the imposition of the sentence. As recommended for amendment, the section requires at least some effort on the part of the claimant to commence his action within the ordinary six-month period of limitations as a condition to enjoyment of the extended period of limitations provided for claimants who have lost their civil rights. As originally enacted, this section gave the same extended period of limitations to the plaintiff who lost his civil rights toward the end of the six-month period as the claimant whose cause of action accrued after his civil rights had been lost (i.e., while he was awaiting the outcome of an appeal from the conviction, or was imprisoned, or was on parole). Yet, in each case, the extension was predicated on the statutory requirement that his inability to sue must be "because" he had been sentenced to a state prison. The amendment thus seeks to clarify this causal relationship by defining it in terms of whether the claimant had made a reasonable effort to commence the action or to obtain a restoration of his civil right to do so. Since the facts would ordinarily be a matter of public record, it seems fair to place the burden of proof on the public entity to establish the claimant's ineligibility for the extension of time.

The Penal Code permits a prisoner to apply for a limited restoration of civil rights. See PENAL CODE § 2600 (limited restoration by judge between time of sentencing and time convicted person actually commences to serve sentence), § 2601 (limited restoration by Adult Authority during

imprisonment), § 3054 (limited restoration by Adult Authority to parolee).

The last sentence has been recast as a new subdivision, with appropriate rewording in the interest of clarity. The last five words are deleted because they are redundant; they also tend to invite a contention that the prisoner's claim must be presented within the 100-day or one-year periods of "time prescribed" in 911.2 and that the late claim procedures do not apply. Although this contention probably would be rejected, it seems advisable to delete the basis for it.

Section 945.8

Comment. This amendment conforms Section 945.8 to the proposal, incorporated in the language of new Section 930.6 (applicable to claims procedures established by agreement) and amended Section 935 (applicable to claims procedures established by local charter or ordinance), that the maximum period of limitations for commencement of an action on a rejected claim should be uniformly set at six months (except for plaintiffs without civil rights). Amended Sections 930.6 and 935 both so provide. They should thus be expressly indicated in the present section as exceptions to the rule, provided in Section 945.8, making the ordinary statute of limitations applicable.

Section 946.4

Comment. This section replaces present Section 945.5. As originally enacted in 1963 as a part of a State Bar legislative program, Section 945.5 contained a number of ambiguities which the new section seeks to resolve. The operative language of the original section provided that, when a public agency "has failed to file [with the designated officials] the information required to be filed under Section 53051, then and in such event the presentation of any such claim shall not be required." A discussion of the problems created by this language and the solutions provided by the new section follows.

First, the original version did not make it clear when the public agency's failure to file was to be operative (i.e., when the cause of action accrued, when the action was commenced or when an effort to present a claim was undertaken?). What if the entity, although in default when the cause of action accrued, later complied with Section 53051 before the plaintiff attempted to present his claim? Or what if the agency was in compliance when the time for presenting a claim expired but thereafter failed to keep its statement for the Roster up to date as required by Section 53051, and it was thus not in compliance when the plaintiff commenced his action?

Questions of this sort are resolved by the new section by making the operative period of time the 90-day period after the accrual of the claim. If, during this period, the public agency is not in compliance with the Roster procedure, presentation of a claim is excused. The entity, however, may comply at any time during the period; but, if it does, the injured person may then present his claim. The rule thus proposed, it will be noted, applies to both "100-day" and "one-year" claims in the interest of certainty and encouragement of diligence. By checking the Rosters at the end of 90 days, the plaintiff can always determine whether he must present a claim or not within the remaining 10 day or 275 day period (depending on

the kind of claim asserted) available for that purpose. Moreover, he he need have no concern that the public agency may thereafter file the required statements--perhaps on the last day for presentation of the claim or of an application for leave to present a late claim--and then contend that nonpresentation bars suit. Since the purpose of the Roster appears to be to give official notice of where and to whom the claim may be presented, 90 days is a reasonable basis for estopping the public agency from relying on the claims procedure; on the other hand, compliance with the Roster procedure within the 90 days would fulfill its purpose, thereby curing any default as of the time the cause of action accrued without prejudice to the claimant.

Second, the original version of Section 945.5 did not make clear what deficiencies, other than the total absence of a statement, would constitute a "failure to file . . . the information required." The problem was particularly acute in that Section 53051 expressly required the public agency to present an amended statement within 10 days after any change in the relevant facts. What if the Roster statement was up to date when the cause of action accrued but, due to a change of facts, had become out of date by the time the claimant attempted to present a claim? Conversely, what if it was accurate when the time to present a claim expired but prior thereto was defective or incomplete?

The new section resolves these kinds of problems by relating the sufficiency of the Roster statement to the 90-day period and excusing compliance with the claim presentation requirement only if the defect (which must be a "substantial" one) existed throughout the entire 90 days. This tends to carry out the purpose of the Roster requirement to give fair notice but does not adversely affect the rights of claimants in any meaningful sense.

Third, unlike the original version, which was silent on these points, the new section expressly places the burden of proof of compliance with the Roster procedure on the public agency (which has the evidence readily at hand) and declares a special one year statute of limitations in order to promote the policy of early disposition which undergirds the claims procedure.

Section 946.6

Comment. Section 946.6 establishes a new procedure for obtaining a judicial determination following a public entity's rejection of an application for leave to present a late claim. Under the original procedure enacted in 1963, a claimant was required to file a petition in court for leave to present a late claim to the public entity. The petition was required to be filed within 20 days after the application for leave to present a late claim was denied or deemed denied pursuant to Section 911.6. The period provided in existing law is too short and consitutes a trap for all but the most astute claimants. Moreover, in pursuit of claims against the State, venue for such a petition lay only in those counties in which the Attorney General maintains an office (Sacramento, San Francisco, and Los Angeles); whereas, if an action is later commenced on the same claim, the proper court for the trial of the action is a court in the county where the injury occurred (Section 955.2).

In addition to these specific deficiencies, the existing procedure is unnecessarily cumbersome and results in unreasonable delay of the trial of actions on the merits. Although the existing procedure has the merit of providing the governing board with an opportunity to consider a claim on its merits before a judicial remedy need be resorted to, the necessity for providing a simpler procedure for seeking judicial relief following the denial of a late claim application outweighs any benefit that may result from giving the board a second opportunity to consider a late claim. Hence, Section 946.6 is designed to provide a simplified procedure whereby a judicial determination of the grounds that may exist to excuse timely filing may be sought without the complicated procedural pitfalls inherent in the existing procedure.

Subdivision (a) of the new section states the principle upon which the simplified procedure is predicated, namely, that a late claimant may petition a court for an order relieving him from the necessity of presenting a claim to the public entity before an action based on the claim may be commenced. Of course, the judicial procedure contemplated in subdivision (a) requires as a prerequisite the presentation and rejection of an application to the public entity to present a late claim as provided in Sections 911.4 and 911.6. Subdivision (a) also eliminates the venue problem in the existing procedure by providing that the proper court for hearing the petition is a court of competent jurisdiction in which a suit on the cause of action to which the claim relates could be brought. This venue provision brings uniformity to the petition proceeding as well as to any subsequent action that may be brought. See Section 955.2.

The first sentence of subdivision (b) states that the petition must show the same matters presently required in the existing procedure by subdivision (c) of Section 912. The second sentence of subdivision (b) provides that the petition must be made within six months after the application for leave to file a late claim is denied or deemed to be denied pursuant to Section 911.6. This extension of time to six months within which to seek judicial relief brings uniformity to the law relating to claims and actions against public entities and public employees rather than a hodgepodge of varying time limits that create unnecessary confusion and complexity. Hence, the time specified in subdivision (b) for filing the petition for judicial relief from the claim presentation requirements is precisely the same as the time specified in Section 945.6 for commencing legal action on a claim that has been denied or deemed denied on the merits.

Subdivision (c) states the same conditions for judicial relief as

presently stated in the existing procedure provided by Section 912. There is no substantive change between the recommended procedure and the existing procedure as to the conditions warranting judicial relief from the claims presentation requirements.

Subdivision (d) merely specifies the persons to whom and the time within which notice of the petition proceeding should be given. There is no substantive change in this regard between the recommended procedure and the existing procedure as specified in Section 912.

Subdivision (e) restates the substance of paragraph (e) of Section 912. No substantive change is made between the recommended procedure and the existing procedure.

Subdivision (f) specifies the time within which an action must be filed if the court grants relief to the petitioner. This subdivision constitutes a special period of limitations on actions that can be commenced only after relief from the claims presentation requirements is granted pursuant to the provisions of this section.

Section 950.2

Comment. It might be contended that, so far as its reference to claims is concerned, this section as originally enacted barred suit against an employee only when no claim of any kind was presented to the employing public entity. This contention appears to be contrary to the legislative intent and presumably would be rejected by the courts. However, it seems advisable to avoid all doubt by making the rule explicit. A claim that is insufficient or too late, or for any other reason is inadequate to support an action against the employing public entity, is not sufficient to support an action against an employee. Thus, the amendment makes it clear that, even when a claim is actually presented to the employing public entity, an action against the employee is not necessarily permitted by this section. The blanket reference to Part 3 makes the rule stated in this section applicable as well to contractual claims procedures (see Section 930 et seq.) and local ordinance or charter claims procedures (see Section 935). The revised section thus makes it clear that--whenever the presentation of a claim is a prerequisite to suit against the employing public entity, whether the presentation is required by statute, by contract or by local ordinance or charter provision--compliance with the applicable claims presentation procedure is a prerequisite to suit against an employee of the public entity.

The addition of the second sentence to this section makes it entirely clear that, when otherwise required, the presentation of a claim to the employing public entity is a prerequisite to suit against an employee notwithstanding the fact that the applicable substantive law may declare the entity to be immune from liability for the injury. The addition of this sentence carries forward the original intent expressed in this section and clarifies an area of substantial ambiguity in the section as originally

enacted. Under Section 950.2 as originally enacted, it could be argued that the presentation of a claim to an employing public entity that is clearly immune from liability for the injury would be a useless act which is impliedly excused because the law does not require idle acts. CIVIL CODE § 3532. But see VAN ALSTYNE, CAL. GOVT. TORT LIABILITY 793 (Cal. Cont. Ed. Bar 1964)(apparently claim must be presented even though the entity is immune). The amendment thus clarifies the section and, because the employing public entity is financially responsible for judgments against its employees (see Section 825), requires the presentation of a claim in all cases. But see Section 943 (amended) making the procedure described in this part inapplicable to employees and former employees of the Regents of the University of California to which the original act was expressly not applicable.

The reference to Chapter 2 of Part 4 includes, in addition to Sections 945.6 and 946 that were mentioned in the section as originally enacted, new Sections 946.4 (compliance with claims presentation procedure excused if the employing public entity fails to comply with the requirements of the Roster of Public Agencies) and 946.6 (new petition procedure or judicial determination following rejection of an application for leave to present a late claim). The broad reference in this section to Chapter 2 of Part 4 thus makes it clear that an action against a public employee is barred if an action against the employing public entity is for any reason barred for failure to comply with any of the provisions in Chapter 2 of Part 4. The reference to barring an action against a public employee if an action against his employing public entity is barred thus complements the reference to barring actions against public employees for failure to comply with any claim procedure that may be applicable as a prerequisite to suit against the employing public entity.

Section 950.4

Comment. Under this section as originally enacted, it is not entirely clear whether "the period prescribed for the presentation of a claim" required the plaintiff to prove lack of notice of the public employment status of the defendant during the 100-day claim presentation period only or during the entire period (up to one year in duration) within which a late claim application could be submitted. Construed liberally, the period prescribed for the presentation of a claim could well be deemed to include the late claim period. Yet, such interpretation would tend to frustrate what appears to have been the legislative intent to make the presentation of a claim unnecessary if the plaintiff had no notice of the public employment status of the defendant during the 100-day period prescribed for the presentation of a claim. The amendment clarifies this ambiguity by stating directly that the period referred to is that prescribed by Section 911.2 or by such other claims procedure as may be applicable. Since the late claim procedure does not apply to claims required to be filed within one year, the reference to Section 911.2 creates no special problems. Other claims procedures established by contract or by local ordinance or charter provisions may be applicable, but it is convenient to refer to a 100-day period since these may not require the presentation of a claim within a period of less than 100 days. See Sections 930.6 and 935.

Section 950.4 also has been revised to state specifically that the plaintiff must present a claim only if he knows or has reason to know that the injury was caused by an act or omission of the public employee in the scope of his employment. This states the apparent legislative intent even though it could be argued that the section as originally enacted required that a claim be presented whenever the defendant is a public employee without regard to whether or not he was acting in the scope of his employment when the act or omission resulting in the injury occurred.

Section 950.6

Comment. This amendment to Section 950.6 conforms the present section to the amended version of Section 945.6. Like Section 945.6, it requires a showing of reasonable effort as a condition for obtaining the benefit of the extended period of limitations for commencement of an action when the plaintiff has lost his civil rights by sentence to imprisonment in a state prison. See Section 945.6 and the Comment thereto.

Section 960.2

Comment. Section 960.2 is replaced by two new sections, Sections 960.2 and 960.3. See the Comments to the cited sections.

Section 960.2

Comment. In the interest of clarification, Section 960.2 has been recast as two new sections, Sections 960.2 and 960.3. New Section 960.2 defines the circumstances in which substituted service on the Secretary of State is permitted. As originally enacted, Section 960.2 authorized this form of service in two situations: (1) when the public agency "fails to comply with Section 53051," and (2) if the governing body cannot be found, and service of process cannot be made, in the exercise of due diligence. These occasions for substituted service have been retained but made more precise in the new section.

Failure to comply with Section 53051 is defined in the new section as either the absence of a statement in the Roster of Public Agencies or the presence in the Roster of a statement that is not in substantial compliance with the requirements of Section 53051 or is incomplete or inaccurate. For example, failure to present an up-to-date amended statement within the 10 days allowed by Section 53051, following a change of circumstances, would mean that the statement on file is "inaccurate" and not substantially in conformity with that section. The period of 10 days after the commencement of the action was chosen as the base period for determining compliance because this would permit the agency to file an original or amended statement and thus insist on service in the normal fashion within the same period of time, after commencement of the action, which is allowed by Section 53051 for filing amended statements in the usual course.

As originally enacted, Section 960.2 authorized substituted service if the governing board could not be found at the last known "official mailing address" of the entity and if service could not be affected with due diligence. Except as reflected in subdivision (c), this basis for substituted service has been omitted in the new section. Under both the

original and the new section, no showing of diligence was or is required if no statement is in the Roster; on the other hand, if a statement is on file, all that would appear to be necessary to establish diligence is a good faith effort to accomplish service at the addresses set forth in the statement. In any event, a court order must be obtained under new Section 960.3.

Section 960.3

Comment. This section is new. It is an adaption of part of former Section 960.2 which has been recast as two separate sections in the present proposal. See new Section 960.2 and the Comment thereto. No changes of substance have been introduced in the present section.

Section 960.4

Comment. The change of reference in this section is required because of the division of original Section 960.2 into two new sections, Sections 960.2 and 960.3, only one of which need be referred to in this section.

Section 960.8

Comment. The addition of Section 960.8 completes the disposition of matters presently covered in original Section 960.2. New Section 960.8 simply provides that service in accord with the information contained in the statement or amended statement on file in the Roster of Public Agencies constitutes sufficient service on the public entity.

Section 53050

Comment. This amendment to Section 53050 makes the section conform substantially to the language of Section 811.2 (defining "public entity").

Section 53051

Comment. These self-explanatory amendments to Section 53051 incorporate the proposals of the State Bar Committee on Administration of Justice as recorded in 39 CAL. S. B. J. 513-514 (1964) (i.e., "maintains an office") and makes other minor changes in wording in the interest of clarity consistent with Sections 946.4 and 960.2 (added).

Section 17000

Comment. The amendment to this definitional section defines terms that are used in the remaining sections of this article in a manner consistent with the definitions used in the Governmental Liability Act. See GOVT. CODE §§ 810.2, 810.4 and 811.2. This makes applicable to motor vehicle cases the same definitions that apply to other tort actions against public entities.

Section 17001

Comment. This amendment clarifies the existing law in regard to the liability of public entities for negligent and intentional torts of public employees operating motor vehicles in the scope of their public employment. The Governmental Liability Act specifically imposes liability on public entities for the intentional torts of public employees. See GOVT. CODE § 815.2. Hence, the amendment removes the existing ambiguity between conflicting statutory language.

To the extent that a "servant" can be considered a narrower classification of persons that an "agent," the amendment restricts the liability of public entities to the former class of persons consistent with the Governmental Liability Act. See GOVT. CODE § 810.2; VEHICLE CODE § 17000 (amended).

Section 17002

Comment. Vehicle Code Section 17002, which grants a right of subrogation to a public entity vicariously liable for the negligence of its personnel in the operation of motor vehicles, should be explicitly repealed. The policy expressed in this section is contrary to the general policy expressed in the Governmental Liability Act regarding the allocation of ultimate financial responsibility for acts or omissions of public personnel within the scope of public service, and this section probably was impliedly repealed by the enactment of the 1963 legislation. Under the Governmental Liability Act, a public entity is financially responsible for the torts of public personnel within the scope of their public service unless the officer, servant or employee was guilty of actual fraud, corruption or actual malice. See GOVT. CODE § 825.2. There is no good reason for retaining an apparent exception to this general policy in the vehicle tort situation.

Section 17002

Comment. Section 17002 should be added to the Vehicle Code to make the ownership liability statute (Article 2 (commencing with Section 17150) of Chapter 1 of Division 9 of the Vehicle Code) explicitly applicable to public entities to the same extent that it applies to private owners of motor vehicles. Prior to the decision of the California Supreme Court in Muskopf v. Corning Hospital District, 55 Cal. App.2d 211, 11 Cal. Rptr. 89, 359 P.2d 457 (1961), the liability of public entities as vehicle owners had been limited by judicial decision to vehicles maintained for use in "proprietary" activities; no vehicle ownership liability existed where the publicly owned vehicle was maintained solely for use in "governmental" activities. This "governmental-proprietary" distinction, however, was abolished by the Muskopf decision and by the 1963 legislation enacting the Governmental Liability Act. Hence, it is probable that ownership liability exists today for public entities. See VAN ALSTYNE, CAL. GOVT. TORT LIABILITY § 7.65 (Cal. Cont. Ed. Bar 1964). The uncertainties in existing law should be removed by clarifying legislation that states this liability explicitly. This is accomplished by the addition of Section 17002 to the Vehicle Code.

The reference at the beginning of this section to the indemnification provisions of the Governmental Liability Act makes it clear that Vehicle Code Section 17153 does not control subrogation rights of the public entity where liability is based upon the acts or omissions of public personnel acting within the scope of their public employment. This does not affect the application of the subrogation rights expressed in Section 17153, however, where the liability of the public entity is based solely upon vehicle ownership

and does not arise by reason of the entity's vicarious responsibility for the acts or omissions of public personnel acting within the scope of public employment. Hence, the policy underlying the indemnification provisions of the Governmental Liability Act is preserved in its application to motor vehicle torts to the extent that these indemnification provisions are otherwise applicable to such torts.

Section 17004

Comment. This amendment expands to all public employees the immunity granted by this section for liability resulting from the operation in the line of duty of an authorized emergency vehicle. This extension of immunity to all public employees is appropriate in light of the broad definition of "authorized emergency vehicle" contained in Vehicle Code Section 165 (added by Cal. Stats. 1961, Ch. 653, § 12, p. 1858). Under that definition, emergency calls in authorized emergency vehicles may take place under a variety of circumstances not clearly qualifying for the immunity granted under Section 17004 in its present form. However, there is no apparent reason for limiting the immunity in this section to less than all such emergency situations. Accordingly, Section 17004 is amended to clarify this inconsistency.