

Memorandum 2011-9

**Technical and Minor Substantive Corrections:
Statutory Cross-References to "Tort Claims Act"
(Draft Tentative Recommendation)**

In 1963, the Legislature enacted Division 3.6 of Title 1 of the Government Code, titled "Claims and Actions Against Public Entities and Public Employees" (hereafter, "Division 3.6"), on recommendation of the Commission. See 1963 Cal. Stat. chs. 1681, 1682, 1683, 1715; see also 1963 Cal. Stat. chs. 1684, 1805. Prior to the enactment of this legislation, which provided a comprehensive statute for civil liability applicable to public entities and employees in California, the civil liability landscape was governed by a confusing and inconsistent patchwork of rules. See Memorandum 2010-6, p. 5.

Over the years, Division 3.6 has been referred to as the "Tort Claims Act" in various statutes. However, the California Supreme Court has rejected this nomenclature and concluded that "Government Claims Act" is a more appropriate and inclusive short-title for the statute. *City of Stockton v. Superior Court*, 42 Cal. 4th 730, 741-42, 171 P.3d 20, 68 Cal. Rptr. 3d 295 (2007); see also Memorandum 2009-38, p. 38.

In light of this development, cross-references to the "Tort Claims Act" should be amended to ensure consistency with the Court's ruling. The staff has found six cross-references in need of amendment.

A draft of a tentative recommendation, including a narrative explanation and proposed legislation, is attached for the Commission's review. **The Commission needs to decide whether to approve the draft as a tentative recommendation (as is, or with revisions), for circulation for comment.**

In preparing this memorandum and the attached draft, the staff had assistance from Michael Lew, a 2010 graduate of University of Michigan Law

Any California Law Revision Commission document referred to in this memorandum can be obtained from the Commission. Recent materials can be downloaded from the Commission's website (www.clrc.ca.gov). Other materials can be obtained by contacting the Commission's staff, through the website or otherwise.

The Commission welcomes written comments at any time during its study process. Any comments received will be a part of the public record and may be considered at a public meeting.

School, who served as a volunteer law clerk for the Commission last fall. The staff is grateful for his help.

Respectfully submitted,

Barbara Gaal
Chief Deputy Counsel

CALIFORNIA LAW REVISION COMMISSION

STAFF DRAFT

TENTATIVE RECOMMENDATION

Statutory Cross-References to “Tort Claims Act”

January 2011

The purpose of this tentative recommendation is to solicit public comment on the Commission’s tentative conclusions. A comment submitted to the Commission will be part of the public record. The Commission may consider the comment at a public meeting when the Commission determines what, if any, recommendation it will make to the Legislature. It is just as important to advise the Commission that you approve the tentative recommendation as it is to advise the Commission that you believe revisions should be made to it.

COMMENTS ON THIS TENTATIVE RECOMMENDATION SHOULD BE RECEIVED BY THE COMMISSION NOT LATER THAN _____.

The Commission will often substantially revise a proposal in response to comment it receives. Thus, this tentative recommendation is not necessarily the recommendation the Commission will submit to the Legislature.

California Law Revision Commission
4000 Middlefield Road, Room D-2
Palo Alto, CA 94303-4739
650-494-1335
<commission@clrc.ca.gov>

SUMMARY OF TENTATIVE RECOMMENDATION

Division 3.6 (commencing with Section 810) of Title 1 of the Government Code is commonly referred to as the California “Tort Claims Act.” That is a misnomer, because Division 3.6 is not limited to tort claims. It also encompasses certain types of contract claims against public entities and public employees.

To prevent confusion and accurately describe the statutory content, the California Supreme Court recently adopted the practice of referring to Division 3.6 as the “Government Claims Act,” instead of the “Tort Claims Act.”

The Law Revision Commission recommends that several code provisions be revised to conform to this practice. In particular, the Commission recommends that the short title “Government Claims Act” be officially adopted, and misleading statutory references to the “Tort Claims Act” be eliminated.

This recommendation was prepared pursuant to Government Code Section 8298.

STATUTORY CROSS-REFERENCES TO “TORT CLAIMS ACT”

1 Division 3.6 (commencing with Section 810) of Title 1 of the Government
2 Code, titled “Claims and Actions Against Public Entities and Public Employees”
3 (hereafter, “Division 3.6”), specifies rules of civil liability that apply to public
4 entities and public employees in California. Several statutory provisions currently
5 refer to Division 3.6 as the “Tort Claims Act.” However, the California Supreme
6 Court has stated that “Government Claims Act” is a more appropriate short title
7 for Division 3.6. In light of this, the Law Revision Commission recommends that
8 the cross-references to “Tort Claims Act” be corrected.

9 **Historical Background**

10 Division 3.6 was added to the Government Code in 1963 on recommendation of
11 the Commission.¹ Prior to the passage of this statute, the rules governing civil
12 liability of public entities and public employees were confusing and inconsistent.
13 Some of those rules were based on statute, while others stemmed from case law.
14 Furthermore, the rules sometimes overlapped or conflicted.²

15 In 1961, the California Supreme Court decided two cases that would ultimately
16 serve as the driving impetus for reform in this area of law.³ In *Muskopf*, the Court
17 made public entities civilly liable for the torts of their agents by suspending their
18 sovereign immunity, while in *Lipman*, the Court held that discretionary immunity,
19 which protects public employees, would not necessarily extend to the employing
20 public entity. In response, the Legislature decided to temporarily suspend the
21 *Muskopf* and *Lipman* decisions while assigning the Commission the task of
22 developing a comprehensive statute on governmental liability and immunity. The
23 Commission’s efforts ultimately resulted in the passage of Division 3.6 by the
24 Legislature.

25 **Usage of “Tort Claims Act” and “Government Claims Act”**

26 Over the years, Division 3.6 has often been referred to as the “Tort Claims
27 Act.”⁴ For example, the term “Tort Claims Act” is currently used in six different
28 code sections.⁵

1. 1963 Cal. Stat. chs. 1681, 1682, 1683, 1715; see also 1963 Cal. Stat. chs. 1684, 1805.

2. *Recommendation Relating to Sovereign Immunity, Number 1 – Tort Liability of Public Entities and Public Employees*, 5 Cal. L. Revision Comm’n Reports 801, 810 (1963).

3. See Commission Staff Memorandum 2010-6, pp. 4-5; *Muskopf v. Corning Hospital District*, 55 Cal. 2d 211, 359 P.2d 457, 11 Cal. Rptr. 89 (1961); *Lipman v. Brisbane Elementary School District*, 55 Cal. 2d 224, 359 P.2d 465, 11 Cal. Rptr. 97 (1961).

4. *Baines Pickwick Ltd. v. City of Los Angeles*, 72 Cal. App. 4th 298, 302-03, 85 Cal. Rptr. 2d 74 (1999).

1 This nomenclature has led to confusion, because Division 3.6 is not limited to
2 tort claims.⁶ Rather, courts have repeatedly found that some of its provisions also
3 apply to certain types of contract matters.⁷

4 Consequently, the California Supreme Court recently adopted the practice of
5 referring to Division 3.6 as the “Government Claims Act,” so as to “avoid the
6 confusion” created by the informal short title “Tort Claims Act.”⁸ The Court
7 explained that “Government Claims Act” is “an appropriately inclusive term and
8 an apt short version” of the title given by the 1963 Legislature: “Claims and
9 Actions Against Public Entities and Public Employees.”⁹

10 **Revising the Codes to Eliminate Confusion**

11 Consistent with the California Supreme Court’s decision, the Commission
12 recommends two legislative steps. First, references to the California “Tort Claims
13 Act” should be replaced with “Government Claims Act” throughout the codes.¹⁰
14 Second, the code section at the beginning of Division 3.6 (Section 810) should be
15 amended to expressly state that the division may be referred to as the
16 “Government Claims Act.”¹¹

5. See Civ. Code § 43.99(d); Code Civ. Proc. § 1038(a); Educ. Code §§ 89307(b)(5)(C), 89750.5(b); Gov’t Code § 54956.9(b)(3)(C); Penal Code § 28245 (operative Jan. 1, 2012).

6. See, e.g., *City of Stockton v. Superior Court*, 42 Cal. 4th 730, 734, 741-42, 171 P.3d 20, 68 Cal. Rptr. 3d 295 (2007). As the court explained in *Baines Pickwick*, “the pervasive and indiscriminate use of the term Tort Claims Act to refer to the diverse topics covered by section 810 et seq. has produced confusion concerning the applicability of section 900 et seq. to matters sounding in contract.” 72 Cal. App. 4th at 309.

7. For example, the California Supreme Court held in *City of Stockton* that Government Code “sections 905 and 954.4 were always intended to embrace contract as well as tort claims.” 42 Cal. 4th at 740. The Court also noted that “courts have routinely applied the claim requirements to contract causes of action against local government defendants,” *id.* at 739, and that “the employee indemnification and defense provisions found in parts 2 and 7 of the act apply to contract as well as tort causes of action,” *id.* at 742 n.7.

8. *Id.* at 734; see also *id.* at 741-42. Before the California Supreme Court reached this conclusion, several courts of appeal had already rejected the term “Tort Claims Act” and recommended use of “Government Claims Act.” See, e.g., *Gatto v. County of Sonoma*, 98 Cal. App. 4th 744, 751 n.3, 120 Cal. Rptr. 2d 550 (2002); *Baines Pickwick*, 72 Cal. App. 4th at 310; *Hart v. Alameda County*, 76 Cal. App. 4th 766, 774 n.2, 90 Cal. Rptr. 2d 386 (1999).

9. *City of Stockton*, 42 Cal. 4th at 742 n.7. The Court made clear that the term “Government Claims Act” should be applied to all, not just part, of Division 3.6, “replacing the old ‘Tort Claims Act’ label in its entirety.” *Id.*

10. See proposed amendments to Civ. Code § 43.99; Code Civ. Proc. § 1038; Educ. Code §§ 89307, 89750.5; Gov’t Code § 54956.9; Penal Code § 28245 *infra*. The proposed amendment of Education Code Section 89750.5 would also update a cross-reference. Similarly, the proposed amendment of Government Code Section 54956.9 would insert paragraph labels and make other technical changes. To reflect this proposed relabeling, several cross-references to Section 54956.9 in Government Code Section 54954.5 would be updated. See proposed amendment to Gov’t Code § 54954.5 *infra*.

11. See proposed amendment to Gov’t Code § 810 *infra*.

1 Officially adopting this short title, and conforming the codes as recommended,
2 will help to prevent confusion and ensure consistency with the California Supreme
3 Court's holding on the matter. This will ultimately conserve both judicial and
4 litigant resources.

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PROPOSED LEGISLATION

1 **Civ. Code § 43.99 (amended). Immunity**

2 SECTION 1. Section 43.99 of the Civil Code is amended to read:

3 43.99. (a) There shall be no monetary liability on the part of, and no cause of
4 action for damages shall arise against, any person or other legal entity that is under
5 contract with an applicant for a residential building permit to provide independent
6 quality review of the plans and specifications provided with the application in
7 order to determine compliance with all applicable requirements imposed pursuant
8 to the State Housing Law (Part 1.5 (commencing with Section 17910) of Division
9 13 of the Health and Safety Code), or any rules or regulations adopted pursuant to
10 that law, or under contract with that applicant to provide independent quality
11 review of the work of improvement to determine compliance with these plans and
12 specifications, if the person or other legal entity meets the requirements of this
13 section and one of the following applies:

14 (1) The person, or a person employed by any other legal entity, performing the
15 work as described in this subdivision, has completed not less than five years of
16 verifiable experience in the appropriate field and has obtained certification as a
17 building inspector, combination inspector, or combination dwelling inspector from
18 the International Conference of Building Officials (ICBO) and has successfully
19 passed the technical written examination promulgated by ICBO for those
20 certification categories.

21 (2) The person, or a person employed by any other legal entity, performing the
22 work as described in this subdivision, has completed not less than five years of
23 verifiable experience in the appropriate field and is a registered professional
24 engineer, licensed general contractor, or a licensed architect rendering independent
25 quality review of the work of improvement or plan examination services within
26 the scope of his or her registration or licensure.

27 (3) The immunity provided under this section does not apply to any action
28 initiated by the applicant who retained the qualified person.

29 (4) A “qualified person” for purposes of this section means a person holding a
30 valid certification as one of those inspectors.

31 (b) Except for qualified persons, this section shall not relieve from, excuse, or
32 lessen in any manner, the responsibility or liability of any person, company,
33 contractor, builder, developer, architect, engineer, designer, or other individual or
34 entity who develops, improves, owns, operates, or manages any residential
35 building for any damages to persons or property caused by construction or design
36 defects. The fact that an inspection by a qualified person has taken place may not
37 be introduced as evidence in a construction defect action, including any reports or
38 other items generated by the qualified person. This subdivision shall not apply in
39 any action initiated by the applicant who retained the qualified person.

1 (c) Nothing in this section, as it relates to construction inspectors or plans
2 examiners, shall be construed to alter the requirements for licensure, or the
3 jurisdiction, authority, or scope of practice, of architects pursuant to Chapter 3
4 (commencing with Section 5500) of Division 3 of the Business and Professions
5 Code, professional engineers pursuant to Chapter 7 (commencing with Section
6 6700) of Division 3 of the Business and Professions Code, or general contractors
7 pursuant to Chapter 9 (commencing with Section 7000) of Division 3 of the
8 Business and Professions Code.

9 (d) Nothing in this section shall be construed to alter the immunity of employees
10 of the Department of Housing and Community Development under the ~~Fort~~
11 Government Claims Act (Division 3.6 (commencing with Section 810) of Title 1
12 of the Government Code) when acting pursuant to Section 17965 of the Health
13 and Safety Code.

14 (e) The qualifying person shall engage in no other construction, design,
15 planning, supervision, or activities of any kind on the work of improvement, nor
16 provide quality review services for any other party on the work of improvement.

17 (f) The qualifying person, or other legal entity, shall maintain professional errors
18 and omissions insurance coverage in an amount not less than two million dollars
19 (\$2,000,000).

20 (g) The immunity provided by subdivision (a) does not inure to the benefit of the
21 qualified person for damages caused to the applicant solely by the negligence or
22 willful misconduct of the qualified person resulting from the provision of services
23 under the contract with the applicant.

24 **Comment.** Subdivision (d) of Section 43.99 is amended to more accurately refer to the content
25 of Division 3.6 (commencing with Section 810) of Title 1 of the Government Code. See *City of*
26 *Stockton v. Superior Court*, 42 Cal. 4th 730, 734, 741-42, 171 P.3d 20, 68 Cal. Rptr. 3d 295
27 (2007); see also Gov't Code § 810 (stating that Division 3.6 of Title 1 of the Government Code
28 may be referred to as "Government Claims Act").

29 **Code Civ. Proc. § 1038 (amended). Determination of whether proceeding was brought in**
30 **good faith and with reasonable cause**

31 SEC. 2. Section 1038 of the Code of Civil Procedure is amended to read:

32 1038. (a) In any civil proceeding under the ~~California Tort~~ Government Claims
33 Act (Division 3.6 (commencing with Section 810) of Title 1 of the Government
34 Code) or for express or implied indemnity or for contribution in any civil action,
35 the court, upon motion of the defendant or cross-defendant, shall, at the time of the
36 granting of any summary judgment, motion for directed verdict, motion for
37 judgment under Section 631.8, or any nonsuit dismissing the moving party other
38 than the plaintiff, petitioner, cross-complainant, or intervenor, or at a later time set
39 forth by rule of the Judicial Council adopted under Section 1034 determine
40 whether or not the plaintiff, petitioner, cross-complainant, or intervenor brought
41 the proceeding with reasonable cause and in the good faith belief that there was a
42 justifiable controversy under the facts and law which warranted the filing of the
43 complaint, petition, cross-complaint, or complaint in intervention. If the court

1 should determine that the proceeding was not brought in good faith and with
2 reasonable cause, an additional issue shall be decided as to the defense costs
3 reasonably and necessarily incurred by the party or parties opposing the
4 proceeding, and the court shall render judgment in favor of that party in the
5 amount of all reasonable and necessary defense costs, in addition to those costs
6 normally awarded to the prevailing party. An award of defense costs under this
7 section shall not be made except on notice contained in a party's papers and an
8 opportunity to be heard.

9 (b) "Defense costs," as used in this section, shall include reasonable attorneys'
10 fees, expert witness fees, the expense of services of experts, advisers, and
11 consultants in defense of the proceeding, and where reasonably and necessarily
12 incurred in defending the proceeding.

13 (c) This section shall be applicable only on motion made prior to the discharge
14 of the jury or entry of judgment, and any party requesting the relief pursuant to
15 this section waives any right to seek damages for malicious prosecution. Failure to
16 make the motion shall not be deemed a waiver of the right to pursue a malicious
17 prosecution action.

18 (d) This section shall only apply if the defendant or cross-defendant has made a
19 motion for summary judgment, judgment under Section 631.8, directed verdict, or
20 nonsuit and the motion is granted.

21 **Comment.** Subdivision (a) of Section 1038 is amended to more accurately refer to the content
22 of Division 3.6 (commencing with Section 810) of Title 1 of the Government Code. See *City of*
23 *Stockton v. Superior Court*, 42 Cal. 4th 730, 734, 741-42, 171 P.3d 20, 68 Cal. Rptr. 3d 295
24 (2007); see also Gov't Code § 810 (stating that Division 3.6 of Title 1 of the Government Code
25 may be referred to as "Government Claims Act").

26 **Educ. Code § 89307 (amended). Closed session of legislative body**

27 SEC. 3. Section 89307 of the Education Code is amended to read:

28 89307. (a) Any legislative body may hold a closed session under any of the
29 following circumstances:

30 (1) A closed session with its negotiator prior to the purchase, sale, exchange, or
31 lease of real property by or for the student body organization to grant authority to
32 its negotiator regarding the price and terms of payment for the purchase, sale,
33 exchange, or lease. Prior to the closed session, the legislative body shall hold an
34 open and public session in which it identifies its negotiators, the real property or
35 real properties that the negotiations may concern, and the person or persons with
36 whom its negotiators may negotiate.

37 (2) For purposes of this subdivision:

38 (A) A negotiator may be a member of the legislative body.

39 (B) "Lease" includes renewal or renegotiation of a lease.

40 (b)(1) Based on advice of its legal counsel, holding a closed session to confer
41 with, or receive advice from, its legal counsel regarding a liability claim or
42 pending litigation when discussion in open session concerning the matter would
43 prejudice the position of the student body organization in the litigation.

1 (2) For purposes of this subdivision, all applications of the lawyer-client
2 privilege other than those provided in this section are hereby abrogated. This
3 section is the exclusive expression of the lawyer-client privilege for purposes of
4 conducting closed-session meetings pursuant to this article.

5 (3) For purposes of this subdivision, “litigation” means any adjudicatory
6 proceeding, including, but not limited to, eminent domain, court proceeding, or a
7 proceeding of an administrative body exercising its adjudicatory authority, hearing
8 officer, or arbitrator.

9 (4) For purposes of this subdivision, litigation shall be considered pending when
10 any of the following circumstances exist:

11 (A) Litigation, to which the student body organization is a party, has been
12 initiated formally.

13 (B) A point has been reached where, in the opinion of the legislative body on the
14 advice of its legal counsel, based on existing facts and circumstances, there is a
15 significant exposure to litigation against the student body organization.

16 (C) Based on existing facts and circumstances, the legislative body is meeting
17 only to decide whether a closed session is authorized pursuant to subparagraph
18 (B).

19 (D) Based on existing facts and circumstances, the legislative body has decided
20 to initiate, or is deciding whether to initiate, litigation.

21 (5) For purposes of subparagraphs (B), (C), and (D) of paragraph (4), “existing
22 facts and circumstances” shall consist only of one of the following:

23 (A) Facts and circumstances that might result in litigation against the student
24 body organization, but which the organization believes are not yet known to a
25 potential plaintiff or plaintiffs, which facts and circumstances need not be
26 disclosed.

27 (B) Facts and circumstances, including, but not necessarily limited to, an
28 accident, disaster, incident, or transactional occurrence, that might result in
29 litigation against the student body organization and that are known to a potential
30 plaintiff or plaintiffs, which facts or circumstances shall be publicly stated on the
31 agenda or announced.

32 (C) The receipt of a claim pursuant to the ~~Tort~~ Government Claims Act
33 (Division 3.6 (commencing with Section 810) of Title 1 of the Government Code)
34 or some other written communication from a potential plaintiff threatening
35 litigation.

36 (D) A statement made by a person in an open and public meeting threatening
37 litigation on a specific matter within the responsibility of the legislative body.

38 (E) A statement threatening litigation made by a person outside an open and
39 public meeting on a specific matter within the responsibility of the legislative
40 body, so long as the official or employee of the student body organization
41 receiving knowledge of the threat makes a contemporaneous or other record of the
42 statement prior to the meeting. The records so created need not identify the alleged
43 victim of unlawful or tortious sexual conduct or anyone making the threat on their

1 behalf, or identify a public employee who is the alleged perpetrator of any
2 unlawful or tortious conduct upon which a threat of litigation is based, unless the
3 identity of the person has been publicly disclosed.

4 (6) Nothing in this section shall require disclosure of written communications
5 that are privileged and not subject to disclosure pursuant to the California Public
6 Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title
7 1 of the Government Code).

8 (7) Prior to holding a closed session pursuant to this section, the legislative body
9 shall state on the agenda or publicly announce and identify the provision of this
10 section that authorizes the closed session. If the session is closed pursuant to
11 paragraph (1), the legislative body shall state the title of or otherwise specifically
12 identify the litigation to be discussed, unless the legislative body states that to do
13 so would jeopardize the ability of the student body organization to effectuate
14 service of process upon one or more unserved parties, or that to do so would
15 jeopardize its ability to conclude existing settlement negotiations to its advantage.

16 (8) For purposes of this subdivision, a student body organization shall be
17 considered to be a “party” or to have a “significant exposure to litigation” if an
18 officer or employee of the student body organization is a party or has significant
19 exposure to litigation concerning prior or prospective activities or alleged
20 activities during the course and scope of that office or employment, including
21 litigation in which it is an issue whether an activity is outside the course and scope
22 of the office or employment.

23 (c)(1) Nothing contained in this section shall be construed to prevent a
24 legislative body from holding closed sessions with the Attorney General, district
25 attorney, sheriff, or chief of police, or their respective deputies, on matters posing
26 a threat to the security of public buildings or a threat to the public’s right of access
27 to public services or public facilities, or from holding closed sessions during a
28 regular or special meeting to consider the appointment, employment, evaluation of
29 performance, discipline, or dismissal of an employee of the student body
30 organization or to hear complaints or charges brought against the employee by
31 another person or employee unless the employee requests a public session.

32 (2) As a condition to holding a closed session on specific complaints or charges
33 brought against an employee by another person or employee, the employee shall
34 be given written notice of his or her right to have the complaints or charges heard
35 in an open session rather than a closed session, which notice shall be delivered to
36 the employee personally or by mail at least 24 hours before the time for holding
37 the session. If notice is not given, any disciplinary or other action taken by the
38 legislative body against the employee based on the specific complaints or charges
39 in the closed session shall be null and void.

40 (3) A legislative body also may exclude from the public or closed meeting,
41 during the examination of a witness, any or all other witnesses in the matter being
42 investigated by the legislative body.

1 (4) For the purposes of this subdivision, the term “employee” shall include an
2 officer or an independent contractor who functions as an officer or an employee of
3 the student body organization, but shall not include any elected official, member
4 of a legislative body, or other independent contractor. Closed sessions held
5 pursuant to this section shall not include discussion or action on proposed
6 compensation except for a reduction of compensation that results from the
7 imposition of discipline.

8 (d)(1) A legislative body shall publicly report any action taken in closed session
9 and the vote or abstention of every member present thereon, as follows:

10 (A) Approval of an agreement concluding real property negotiations pursuant to
11 subdivision (a) shall be reported after the agreement is final, as follows:

12 (i) If its own approval renders the agreement final, the legislative body board or
13 subboard shall report that approval and the substance of the agreement in open
14 session at the public meeting during which the closed session is held.

15 (ii) If final approval rests with the other party to the negotiations, the legislative
16 body shall disclose the fact of that approval and the substance of the agreement
17 upon inquiry by any person, as soon as the other party or its agent has informed
18 the legislative body of its approval.

19 (B) Approval given to its legal counsel to defend, or seek or refrain from
20 seeking appellate review or relief, or to enter as an amicus curiae in any form of
21 litigation, as the result of a consultation under subdivision (b) shall be reported in
22 open session at the public meeting during which the closed session is held. The
23 report shall identify, if known, the adverse party or parties and the substance of the
24 litigation. In the case of approval given to initiate or intervene in an action, the
25 announcement need not identify the action, the defendants, or other particulars, but
26 shall specify that the direction to initiate or intervene in an action has been given
27 and that the action, the defendants, and the other particulars shall, once formally
28 commenced, be disclosed to any person upon inquiry, unless to do so would
29 jeopardize the ability of the student body organization to effectuate service of
30 process on one or more unserved parties, or that to do so would jeopardize its
31 ability to conclude existing settlement negotiations to its advantage.

32 (C) Approval given to its legal counsel of a settlement of pending litigation, as
33 defined in subdivision (b), at any stage prior to or during a judicial or quasi-
34 judicial proceeding shall be reported after the settlement is final, as follows:

35 (i) If a legislative body accepts a settlement offer signed by the opposing party,
36 the legislative body shall report its acceptance and identify the substance of the
37 agreement in open session at the public meeting during which the closed session is
38 held.

39 (ii) If final approval rests with some other party to the litigation or with the
40 court, then, as soon as the settlement becomes final, and upon inquiry by any
41 person, the legislative body shall disclose the fact of that approval and identify the
42 substance of the agreement.

1 (D) Action taken to appoint, employ, dismiss, accept the resignation of, or
2 otherwise affect the employment status of an employee of the employee
3 organization in closed session pursuant to subdivision (c) shall be reported at the
4 public meeting during which the closed session is held. Any report required by this
5 subparagraph shall identify the title of the employee's position. Notwithstanding
6 the general requirement of this subparagraph, the report of a dismissal or of the
7 nonrenewal of an employment contract shall be deferred until the first public
8 meeting following the exhaustion of administrative remedies, if any.

9 (E) Approval of an agreement concluding labor negotiations with represented
10 employees pursuant to subdivision (e) shall be reported after the agreement is final
11 and has been accepted or ratified by the other party. The report shall identify the
12 item approved and the other party or parties to the negotiation.

13 (2) Reports that are required to be made pursuant to this subdivision may be
14 made orally or in writing. A legislative body shall provide to any person who has
15 submitted a written request to the legislative body within 24 hours of the posting
16 of the agenda, or to any person who has made a standing request for all
17 documentation as part of a request for notice of meetings pursuant to Section
18 89306.5, if the requester is present at the time the closed session ends, copies of
19 any contracts, settlement agreements, or other documents that were finally
20 approved or adopted in the closed session. If the action taken results in one or
21 more substantive amendments to the related documents requiring retyping, the
22 documents need not be released until the retyping is completed during normal
23 business hours, provided that the presiding officer of the legislative body, or his or
24 her designee, orally summarizes the substance of the amendments for the benefit
25 of the document requester or any other person present and requesting the
26 information.

27 (3) The documentation referred to in paragraph (2) shall be available to any
28 person on the next business day following the meeting in which the action referred
29 to is taken or, in the case of substantial amendments, when any necessary retyping
30 is complete.

31 (4) Nothing in this subdivision shall be construed to require that a legislative
32 body approve actions not otherwise subject to the approval of that legislative
33 body.

34 (5) No action for injury to a reputational, liberty, or other personal interest may
35 be commenced by or on behalf of any employee or former employee with respect
36 to whom a disclosure is made by a legislative body in an effort to comply with this
37 subdivision.

38 (e)(1) Notwithstanding any other provision of law, a legislative body may hold
39 closed sessions with the designated representative of the student body organization
40 regarding the salaries, salary schedules, or compensation paid in the form of fringe
41 benefits of its represented and unrepresented employees, and, for represented
42 employees, any other matter within the statutorily provided scope of

1 representation. However, prior to the closed session, the legislative body shall hold
2 an open and public session in which it identifies its designated representatives.

3 (2)(A) Closed sessions of a legislative body, as permitted in this subdivision,
4 shall be for the purpose of reviewing its position and instructing the designated
5 representative of the student body organization.

6 (B) Closed sessions, as permitted in this subdivision, may take place prior to and
7 during consultations and discussions with representatives of employee
8 organizations and unrepresented employees.

9 (C) Closed sessions with the designated representative of the student body
10 organization regarding the salaries, salary schedules, or compensation paid in the
11 form of fringe benefits may include discussion of the available funds and funding
12 priorities of the student body organization, but only insofar as these discussions
13 relate to providing instructions to the designated representative of the student body
14 organization.

15 (D) Closed sessions held pursuant to this subdivision shall not include final
16 action on the proposed compensation of one or more unrepresented employees.

17 (E) For the purposes enumerated in this subdivision, a legislative body may also
18 meet with a state conciliator who has intervened in the proceedings.

19 (3) For the purposes of this subdivision, the term “employee” includes an officer
20 or an independent contractor who functions as an officer or an employee of the
21 student body organization, but shall not include any elected official, member of a
22 legislative body, or other independent contractors.

23 (f)(1) Prior to holding any closed session, the legislative body shall disclose, in
24 an open meeting, the item or items to be discussed in the closed session. The
25 disclosure may take the form of a reference to the item or items as they are listed
26 by number or letter on the agenda. In the closed session, the legislative body may
27 consider only those matters covered in its statement. Nothing in this subdivision
28 shall require or authorize a disclosure of information prohibited by state or federal
29 law.

30 (2) After any closed session, the legislative body shall reconvene into open
31 session prior to adjournment, and shall make any disclosures required by
32 subdivision (d) of action taken in the closed session.

33 (3) The disclosure required to be made in open session pursuant to this
34 subdivision may be made at the location announced in the agenda for the closed
35 session, as long as the public is allowed to be present at that location for the
36 purpose of hearing the announcements.

37 **Comment.** Subdivision (b) of Section 89307 is amended to more accurately refer to the
38 content of Division 3.6 (commencing with Section 810) of Title 1 of the Government Code. See
39 *City of Stockton v. Superior Court*, 42 Cal. 4th 730, 734, 741-42, 171 P.3d 20, 68 Cal. Rptr. 3d
40 295 (2007); see also Gov’t Code § 810 (stating that Division 3.6 of Title 1 of the Government
41 Code may be referred to as “Government Claims Act”).

1 **Educ. Code § 89750.5 (amended). Authority of trustees to pay claim or to discharge from**
2 **accountability**

3 SEC. 4. Section 89750.5 of the Education Code is amended to read:

4 89750.5. (a) Notwithstanding Sections 948 and 965.2 of the Government Code
5 or any other provision of law, the trustees may settle, adjust, or compromise any
6 pending action or final judgment, without the need for a recommendation,
7 certification, or approval from any other state officer or entity. The Controller
8 shall draw a warrant for the payment of any settlement, adjustment, or
9 compromise, or final judgment against the trustees if the trustees certify that a
10 sufficient appropriation for the payment of the settlement, adjustment,
11 compromise, or final judgment exists.

12 (b) Notwithstanding paragraph (3) of subdivision ~~(e)~~ (b) of Section 905.2 of the
13 Government Code or any other provision of law, the trustees may pay any claim
14 for money or damages on express contract or for an injury for which the trustees
15 or their officers or employees are liable, without approval of the California Victim
16 Compensation and Government Claims Board if the trustees determine that
17 payment of the claim is in the best interests of the California State University and
18 that funds are available to pay the claim. The authority of the trustees conferred by
19 this subdivision does not alter any other requirements governing claims in the ~~For~~
20 Government Claims Act (Division 3.6 (commencing with Section 810) of Title 1
21 of the Government Code), except to grant the trustees authority to pay these
22 claims.

23 (c) Notwithstanding Chapter 3 (commencing with Section 13940) of Part 4 of
24 Division 3 of Title 2 of the Government Code, the trustees may discharge from
25 accountability the sum of one thousand dollars (\$1,000) or less, owing to the
26 California State University if the trustees determine that the money is uncollectible
27 or the amount does not justify the cost of collection. A discharge of accountability
28 by the trustees does not release any person from the payment of any moneys due
29 the California State University.

30 **Comment.** Subdivision (b) of Section 89750.5 is amended to more accurately refer to the
31 content of Division 3.6 (commencing with Section 810) of Title 1 of the Government Code. See
32 *City of Stockton v. Superior Court*, 42 Cal. 4th 730, 734, 741-42, 171 P.3d 20, 68 Cal. Rptr. 3d
33 295 (2007); see also Gov't Code § 810 (stating that Division 3.6 of Title 1 of the Government
34 Code may be referred to as "Government Claims Act").

35 Subdivision (b) is also amended to update a cross-reference. The material formerly in
36 subdivision (c) of Government Code Section 905.2 has been relabeled as paragraph (b)(3).
37 *Compare* 1976 Cal. Stat. ch. 96, § 2 (version of Gov't Code § 905.2 operative when Educ. Code §
38 89750.5 was enacted), *with* 2005 Cal. Stat. ch. 184, § 1 (current version of Gov't Code § 905.2).

39 **Gov't Code § 810 (amended). Short title and application of definitions**

40 SEC. 5. Section 810 of the Government Code is amended to read:

41 810. (a) Unless the provision or context otherwise requires, the definitions
42 contained in this part govern the construction of this division.

43 (b) This division may be referred to as the "Government Claims Act."

1 **Comment.** Section 810 is amended to adopt the short title “Government Claims Act.” For
2 background, see *City of Stockton v. Superior Court*, 42 Cal. 4th 730, 734, 741-42, 171 P.3d 20,
3 68 Cal. Rptr. 3d 295 (2007).

4 **Gov’t Code § 54954.5 (amended). Description of closed session items**

5 SEC. 6. Section 54954.5 of the Government Code is amended to read:

6 54954.5. For purposes of describing closed session items pursuant to Section
7 54954.2, the agenda may describe closed sessions as provided below. No
8 legislative body or elected official shall be in violation of Section 54954.2 or
9 54956 if the closed session items were described in substantial compliance with
10 this section. Substantial compliance is satisfied by including the information
11 provided below, irrespective of its format.

12 (a) With respect to a closed session held pursuant to Section 54956.7:

13 LICENSE/PERMIT DETERMINATION

14 Applicant(s): (Specify number of applicants)

15 (b) With respect to every item of business to be discussed in closed session
16 pursuant to Section 54956.8:

17 CONFERENCE WITH REAL PROPERTY NEGOTIATORS

18 Property: (Specify street address, or if no street address, the parcel number or
19 other unique reference, of the real property under negotiation)

20 Agency negotiator: (Specify names of negotiators attending the closed session)
21 (If circumstances necessitate the absence of a specified negotiator, an agent or
22 designee may participate in place of the absent negotiator so long as the name of
23 the agent or designee is announced at an open session held prior to the closed
24 session.)

25 Negotiating parties: (Specify name of party (not agent))

26 Under negotiation: (Specify whether instruction to negotiator will concern price,
27 terms of payment, or both)

28 (c) With respect to every item of business to be discussed in closed session
29 pursuant to Section 54956.9:

30 CONFERENCE WITH LEGAL COUNSEL — EXISTING LITIGATION

31 ~~(Subdivision (a) Paragraph (1) of subdivision (d) of Section 54956.9)~~

32 Name of case: (Specify by reference to claimant’s name, names of parties, case
33 or claim numbers)

34 or

35 Case name unspecified: (Specify whether disclosure would jeopardize service of
36 process or existing settlement negotiations)

37 CONFERENCE WITH LEGAL COUNSEL — ANTICIPATED LITIGATION

38 Significant exposure to litigation pursuant to ~~subdivision (b) paragraph (2) or (3)~~
39 of subdivision (d) of Section 54956.9: (Specify number of potential cases)

40 (In addition to the information noticed above, the agency may be required to
41 provide additional information on the agenda or in an oral statement prior to the

1 closed session pursuant to ~~subparagraphs (B) to (E)~~ paragraphs (2) to (5),
2 inclusive, of ~~paragraph (3) of subdivision (b)~~ (e) of Section 54956.9.)

3 Initiation of litigation pursuant to paragraph (4) of subdivision (e) (d) of Section
4 54956.9: (Specify number of potential cases)

5 (d) With respect to every item of business to be discussed in closed session
6 pursuant to Section 54956.95:

7 **LIABILITY CLAIMS**

8 Claimant: (Specify name unless unspecified pursuant to Section 54961)

9 Agency claimed against: (Specify name)

10 (e) With respect to every item of business to be discussed in closed session
11 pursuant to Section 54957:

12 **THREAT TO PUBLIC SERVICES OR FACILITIES**

13 Consultation with: (Specify name of law enforcement agency and title of officer,
14 or name of applicable agency representative and title)

15 **PUBLIC EMPLOYEE APPOINTMENT**

16 Title: (Specify description of position to be filled)

17 **PUBLIC EMPLOYMENT**

18 Title: (Specify description of position to be filled)

19 **PUBLIC EMPLOYEE PERFORMANCE EVALUATION**

20 Title: (Specify position title of employee being reviewed)

21 **PUBLIC EMPLOYEE DISCIPLINE/DISMISSAL/RELEASE**

22 (No additional information is required in connection with a closed session to
23 consider discipline, dismissal, or release of a public employee. Discipline includes
24 potential reduction of compensation.)

25 (f) With respect to every item of business to be discussed in closed session
26 pursuant to Section 54957.6:

27 **CONFERENCE WITH LABOR NEGOTIATORS**

28 Agency designated representatives: (Specify names of designated
29 representatives attending the closed session) (If circumstances necessitate the
30 absence of a specified designated representative, an agent or designee may
31 participate in place of the absent representative so long as the name of the agent or
32 designee is announced at an open session held prior to the closed session.)

33 Employee organization: (Specify name of organization representing employee or
34 employees in question)

35 or

36 Unrepresented employee: (Specify position title of unrepresented employee who
37 is the subject of the negotiations)

38 (g) With respect to closed sessions called pursuant to Section 54957.8:

39 **CASE REVIEW/PLANNING**

40 (No additional information is required in connection with a closed session to
41 consider case review or planning.)

1 (h) With respect to every item of business to be discussed in closed session
2 pursuant to Sections 1461, 32106, and 32155 of the Health and Safety Code or
3 Sections 37606 and 37624.3 of the Government Code:

4 REPORT INVOLVING TRADE SECRET

5 Discussion will concern: (Specify whether discussion will concern proposed
6 new service, program, or facility)

7 Estimated date of public disclosure: (Specify month and year)

8 HEARINGS

9 Subject matter: (Specify whether testimony/deliberation will concern staff
10 privileges, report of medical audit committee, or report of quality assurance
11 committee)

12 (i) With respect to every item of business to be discussed in closed session
13 pursuant to Section 54956.86:

14 CHARGE OR COMPLAINT INVOLVING INFORMATION PROTECTED
15 BY FEDERAL LAW

16 (No additional information is required in connection with a closed session to
17 discuss a charge or complaint pursuant to Section 54956.86.)

18 (j) With respect to every item of business to be discussed in closed session
19 pursuant to Section 54956.96:

20 CONFERENCE INVOLVING A JOINT POWERS AGENCY (Specify by
21 name)

22 Discussion will concern: (Specify closed session description used by the joint
23 powers agency)

24 Name of local agency representative on joint powers agency board:

25 (Specify name)

26 (Additional information listing the names of agencies or titles of representatives
27 attending the closed session as consultants or other representatives.)

28 (k) With respect to every item of business to be discussed in closed session
29 pursuant to Section 54956.75:

30 AUDIT BY BUREAU OF STATE AUDITS

31 **Comment.** Section 54954.5 is amended to reflect relabeling of material in Section 54956.9.

32 **Gov't Code § 54956.9 (amended). Closed session relating to pending litigation**

33 SEC. 7. Section 54956.9 of the Government Code is amended to read:

34 54956.9. (a) Nothing in this chapter shall be construed to prevent a legislative
35 body of a local agency, based on advice of its legal counsel, from holding a closed
36 session to confer with, or receive advice from, its legal counsel regarding pending
37 litigation when discussion in open session concerning those matters would
38 prejudice the position of the local agency in the litigation.

39 (b) For purposes of this chapter, all expressions of the lawyer-client privilege
40 other than those provided in this section are hereby abrogated. This section is the
41 exclusive expression of the lawyer-client privilege for purposes of conducting
42 closed-session meetings pursuant to this chapter.

1 (c) For purposes of this section, “litigation” includes any adjudicatory
2 proceeding, including eminent domain, before a court, administrative body
3 exercising its adjudicatory authority, hearing officer, or arbitrator.

4 (d) For purposes of this section, litigation shall be considered pending when any
5 of the following circumstances exist:

6 ~~(a)~~ (1) Litigation, to which the local agency is a party, has been initiated
7 formally.

8 ~~(b)~~(1) (2) A point has been reached where, in the opinion of the legislative body
9 of the local agency on the advice of its legal counsel, based on existing facts and
10 circumstances, there is a significant exposure to litigation against the local agency.

11 ~~(2)~~ (3) Based on existing facts and circumstances, the legislative body of the
12 local agency is meeting only to decide whether a closed session is authorized
13 pursuant to paragraph ~~(1)~~ of this subdivision (2).

14 (4) Based on existing facts and circumstances, the legislative body of the local
15 agency has decided to initiate or is deciding whether to initiate litigation.

16 ~~(3)~~ (e) For purposes of paragraphs ~~(1)~~ (2) and ~~(2)~~ (3) of subdivision (d),
17 “existing facts and circumstances” shall consist only of one of the following:

18 (A) (1) Facts and circumstances that might result in litigation against the local
19 agency but which the local agency believes are not yet known to a potential
20 plaintiff or plaintiffs, which facts and circumstances need not be disclosed.

21 (B) (2) Facts and circumstances, including, but not limited to, an accident,
22 disaster, incident, or transactional occurrence that might result in litigation against
23 the agency and that are known to a potential plaintiff or plaintiffs, which facts or
24 circumstances shall be publicly stated on the agenda or announced.

25 (C) (3) The receipt of a claim pursuant to the ~~Tort~~ Government Claims Act
26 (Division 3.6 (commencing with Section 810) of Title 1 of the Government Code)
27 or some other written communication from a potential plaintiff threatening
28 litigation, which claim or communication shall be available for public inspection
29 pursuant to Section 54957.5.

30 (D) (4) A statement made by a person in an open and public meeting threatening
31 litigation on a specific matter within the responsibility of the legislative body.

32 (E) (5) A statement threatening litigation made by a person outside an open and
33 public meeting on a specific matter within the responsibility of the legislative body
34 so long as the official or employee of the local agency receiving knowledge of the
35 threat makes a contemporaneous or other record of the statement prior to the
36 meeting, which record shall be available for public inspection pursuant to Section
37 54957.5. The records so created need not identify the alleged victim of unlawful or
38 tortious sexual conduct or anyone making the threat on their behalf, or identify a
39 public employee who is the alleged perpetrator of any unlawful or tortious conduct
40 upon which a threat of litigation is based, unless the identity of the person has
41 been publicly disclosed.

42 (F) (f) Nothing in this section shall require disclosure of written communications
43 that are privileged and not subject to disclosure pursuant to the California Public

1 Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title
2 1).

3 ~~(c) Based on existing facts and circumstances, the legislative body of the local~~
4 ~~agency has decided to initiate or is deciding whether to initiate litigation.~~

5 (g) Prior to holding a closed session pursuant to this section, the legislative body
6 of the local agency shall state on the agenda or publicly announce the ~~subdivision~~
7 ~~of this section~~ paragraph of subdivision (d) that authorizes the closed session. If
8 the session is closed pursuant to paragraph (1) of subdivision (a) (d), the body
9 shall state the title of or otherwise specifically identify the litigation to be
10 discussed, unless the body states that to do so would jeopardize the agency's
11 ability to effectuate service of process upon one or more unserved parties, or that
12 to do so would jeopardize its ability to conclude existing settlement negotiations to
13 its advantage.

14 (h) A local agency shall be considered to be a "party" or to have a "significant
15 exposure to litigation" if an officer or employee of the local agency is a party or
16 has significant exposure to litigation concerning prior or prospective activities or
17 alleged activities during the course and scope of that office or employment,
18 including litigation in which it is an issue whether an activity is outside the course
19 and scope of the office or employment.

20 **Comment.** Section 54956.9 is amended to more accurately refer to the content of Division 3.6
21 (commencing with Section 810) of Title 1 of the Government Code. See *City of Stockton v.*
22 *Superior Court*, 42 Cal. 4th 730, 734, 741-42, 171 P.3d 20, 68 Cal. Rptr. 3d 295 (2007); see also
23 Gov't Code § 810 (stating that Division 3.6 of Title 1 of the Government Code may be referred to
24 as "Government Claims Act").

25 Section 54956.9 is also amended to insert paragraph labels, conform internal cross-references
26 to the new labeling, and relocate the substance of former subdivision (c). These changes are
27 purely technical.

28 **Penal Code § 28245 (amended). Acts or omissions deemed discretionary**

29 SEC. 8. Section 28245 of the Penal Code is amended to read:

30 28245. Whenever the Department of Justice acts pursuant to this article as it
31 pertains to firearms other than pistols, revolvers, or other firearms capable of being
32 concealed upon the person, the department's acts or omissions shall be deemed to
33 be discretionary within the meaning of the ~~California Tort Claims Act~~
34 Government Claims Act pursuant to Division 3.6 (commencing with Section 810)
35 of Title 1 of the Government Code.

36 **Comment.** Section 28245 is amended to more accurately refer to the content of Division 3.6
37 (commencing with Section 810) of Title 1 of the Government Code. See *City of Stockton v.*
38 *Superior Court*, 42 Cal. 4th 730, 734, 741-42, 171 P.3d 20, 68 Cal. Rptr. 3d 295 (2007); see also
39 Gov't Code § 810 (stating that Division 3.6 of Title 1 of the Government Code may be referred to
40 as "Government Claims Act").