

A G E N D A

for Meeting of

CALIFORNIA LAW REVISION COMMISSION

Yosemite

November 7-8, 1958

1. Minutes of October, 1958 meeting (Sent to you October 28, 1958)
2. Staff personnel matters.
 - (a) Executive Secretary
 - b. Assistant Executive Secretary
3. Study #37(L) - Claims Statute. (See material from Mr. Kleps enclosed; material from Professor Van Alstyne has not yet been received and will probably be brought to the meeting.)
4. Study #25 - Probate Code Section 259 (Material sent to you on October 28, 1958.)
5. Study #16 - Planning (See Memorandum No. 8 for the SEPTEMBER meeting sent to you prior to that meeting. Additional material (letter from Mr. Gustafson and mimeographed copy of certain Government Code sections) sent to you prior to the October meeting.)
6. Study #21 - Confirmation of Partition Sales (See Memorandum No. 6 for the JUNE meeting sent to you prior to that meeting.)
7. Study #44 - Suit in Common Name (See Memorandum No. 5 for the JUNE meeting sent to you prior to that meeting.)
8. Study #32 - Arbitration (See Memorandum No. 1 sent to you on October 23, 1958).
9. Study #33 - Survival of Tort Actions (See Memorandum No. 4 for the October meeting sent to you prior to that meeting.)

MINUTES OF MEETING

of

November 7 and 8, 1958

YOSEMITE

Pursuant to the call of the Chairman, there was a regular meeting of the Law Revision Commission on November 7 and 8, 1958, at Yosemite.

PRESENT: Mr. Thomas E. Stanton, Jr., Chairman
Mr. John D. Babbage, Vice Chairman
Honorable James A. Cobey
Honorable Clark L. Bradley (November 8)
Honorable Roy A. Gustafson
Mr. Charles H. Matthews
Professor Samuel D. Thurman
Mr. Ralph N. Kleps, ex officio

ABSENT : Mr. Bert W. Levit
Mr. Stanford C. Shaw

Mr. John R. McDonough, Jr., the Executive Secretary, and Miss Louisa R. Lindow, Assistant Executive Secretary, were also present.

The minutes of the meeting of October 8, 9 and 10, 1958, were unanimously approved after a minor correction on page 15.

I. ADMINISTRATIVE MATTERS

A. Staff Personnel Developments:

(1) Executive Secretary. The Executive Secretary reported that Dean Spaeth had written to the deans of about 35 law schools about the available position of faculty member-Executive Secretary, that some of the deans have replied and have suggested names of persons who might be interested in this position, and that Dean Spaeth is now corresponding with the persons whose names have been suggested. He reported also that Professors Van Alstyne and Ruud have stated that they are not interested in being considered for the position.

(2) Assistant Executive Secretary. The Commission considered three letters of application for the position of Assistant Executive Secretary. After the matter was discussed, it was agreed that the Executive Secretary should request the State Personnel Board to hold an examination for this position and that a letter reporting the availability of the position and describing the assignment and the qualifications of the person we are seeking should be sent to various named persons in the offices of the Attorney General, the Department of Public Works, the Board of Equalization and

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the Franchise Tax Board, as well as to the several
district attorneys and county counsels.

B. 1959 Report of the Law Revision Commission: The Executive Secretary reported on correspondence with Mr. George G. Crawford, Chairman of the Assembly Interim Subcommittee on Police Administration and Narcotics. A copy of the Commission's proposed recommendation relating to the Narcotics study was sent to him. Mr. Crawford requested the Commission to delay final action on the recommendation until he could discuss it with his subcommittee. Recently Mr. Stanton wrote him that the 1959 Report was ready to go to the printer. Mr. Crawford responded that his subcommittee has not as yet had an opportunity to consider the recommendation but that the Commission should not hold up the printing of its 1959 Report on this account.

The Executive Secretary also reported that upon approval of the Chairman the Recommendation and Study Relating to Guardians for Nonresidents has been revised in form and made Part X of the 1959 Report of the Commission because it is not substantial enough to warrant publishing as a separate document.

C. Senate Interim Judiciary Committee: The Commission considered a letter dated October 27, 1958, from Mr. John A. Bohn suggesting that bills on the subject of Commission studies on which the Commission will not report to the 1959 Session of the Legislature should be introduced at that Session and referred to the Senate Interim Judiciary Committee. (A copy is attached.) After the matter was discussed, it was agreed that the Executive Secretary should contact Mr. Bohn to inquire further into this matter.

The Executive Secretary reported on a second letter from Mr. Bohn dated October 27, inquiring as to which matters on the Commission's 1959 legislative program will be ready for presentation to the Senate Interim Judiciary Committee at its meeting beginning December 4. After the matter was discussed it was agreed to approve the suggestion made by Senator Cobey that the Executive Secretary contact Mr. Bohn to suggest that the Commission's program be presented to the standing committee in January rather than to the Interim Committee in December.

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D. Addendum to Stanford Contract: The Executive Secretary reported that the funds allocated to the contract with Stanford University for fiscal year 1958-59 have been virtually used up. He reported that it will be necessary to have Stanford do additional work for the Commission during the current fiscal year. After the matter was discussed a motion was made, seconded and unanimously passed that the Chairman be authorized to enter into an addendum to the 1958-59 Stanford contract increasing the maximum amount to be charged thereunder to two thousand two hundred fifty dollars (\$2250.00).

E. Resolution re Senator Jess R. Dorsey: The Commission considered a draft resolution prepared by the Executive Secretary. (A copy is attached.) After the matter was discussed and the draft revised in several particulars a motion was made by Mr. Thurman, seconded by Mr. Matthews, and unanimously adopted to approve the resolution as revised, to read:

WHEREAS, the Honorable Jess R. Dorsey, Member of the Senate of the California Legislature from the 34th Senatorial District and former member of the California Law Revision Commission died on September 27, 1958; and

WHEREAS, Senator Dorsey was appointed as the first Senate member of the Law Revision Commission and served in that capacity for over three years; and

WHEREAS, Senator Dorsey's counsel was invaluable in the organization of the Commission and in planning and carrying forward its work during its formative years; and

WHEREAS, drawing upon his long experience as a member of the Bar and the California Legislature Senator Dorsey contributed significantly to the analysis of problems under consideration by the Commission and to the formulation of legislative measures to eliminate antiquated and inequitable rules of law and to bring the law of California into harmony with modern conditions; and

WHEREAS, Senator Dorsey was at all times a stimulating and engaging member of the Law Revision Commission, who won not only the high regard but the warm affection of its members

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NOW, THEREFORE, the California Law Revision Commission hereby records its sadness at Senator Dorsey's passing, its appreciation for his service as a member of the Commission, and its tribute to his long and distinguished career in the public service of the people of the State of California

The Executive Secretary was directed to have a suitably engrossed copy thereof prepared to be sent to Mrs. Dorsey by the Chairman.

II. CURRENT STUDIES

A. Study No. 16 - Planning: The Commission considered the research study prepared by the Staff; Memoranda No. 8 dated August 29, 1958 and No. 7 dated October 3, 1958; and correspondence from Mr. Kleps dated August 8 and from Mr. Gustafson dated September 15. (A copy of each of these items is attached hereto.)

Mr. Kleps stated that it was his opinion that the Commission should limit its study and recommendation to the sections of the Government Code relating to the adoption and administration of zoning ordinances. He suggested that the Commission is not in a position to make a recommendation that cities and counties not having planning commissions be empowered to adopt master and precise plans because this is a matter requiring special experience and background. After the matter was discussed a motion was made by Mr. Thurman, seconded by Mr. Babbage and unanimously adopted to limit the study and recommendation to the adoption and administration of zoning ordinances. It was agreed that the Chairman and Executive Secretary should decide whether the Commission's official Recommendation should make reference to the ambiguities in the Government Code relating to the adoption and administration of master and precise plans.

The Commission then considered whether it should recommend the revisions proposed in the staff study relating

to the adoption of zoning ordinances by cities and counties not having planning commissions. Mr. Kleps pointed out that the Commission should consider the policy question whether it wanted to recommend a more explicit statement than is presently found in Section 65808 of the Government Code of the power of counties not having planning commissions to adopt zoning ordinances, thus reducing the incentive of counties to comply with the mandatory requirement that counties create planning commissions (Govt. Code § 65300). After the matter was discussed it was agreed that if the revisions proposed in the staff study were recommended they should be made applicable only to cities and to those counties that have not established planning commissions, but should not apply to counties which have established planning commissions which are inactive.

After the Commission discussed further the revisions proposed in the staff study it was agreed that the Commission is not in a position to make recommendations relating to planning procedure -- e.g., whether one noticed public hearing prior to adoption of a zoning ordinance is sufficient or whether two or more hearings should be required. A motion was made by Senator Cobey and seconded by Mr. Stanton that the Chairman and the Executive Secretary be directed to prepare as the Commission's report on this study a statement (1) that the Commission has decided not to make a recommendation relating to this matter because it involves questions of

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public policy on which the Commission is not especially qualified to speak and (2) of the Commission's conception of its appropriate area of operation.

The motion carried:

Aye: Babbage, Bradley, Cobey, Matthews, Stanton,
Thurman

No : Gustafson

Not Present: Levit, Shaw

A motion was made by Senator Cobey and seconded by Mr. Babbage that the Commission's report on this matter be included in its 1959 Report.

The motion carried:

Aye: Babbage, Bradley, Cobey, Matthews, Stanton,
Thurman

No : Gustafson

Not Present: Levit, Shaw

B. Study No. 37(L) - Claims Statute: The Commission considered the Third Progress Report on the Claims Statute Draft prepared by Professor Van Alstyne; correspondence from Mr. Kleps dated October 24 relating to the claims statute with attachments thereto; correspondence from Mr. Kleps dated October 31 and a compilation of his suggestions re the new claims statute; and a draft of a proposed revision of Section 707(b) prepared by the Executive Secretary. (A copy of each of these items is attached hereto.)

1. Constitutional Provision. The Commission discussed the suggestion made by Mr. Kleps that the Constitution be amended by adding a new Section 10 to Article XI rather than by adding Section 38 to Article IV as the Commission had previously decided to recommend. After the matter was discussed, a motion was made by Mr. Stanton and seconded by Senator Cobey to approve the draft constitutional amendment proposed by Mr. Kleps after adding "chartered" before the first "counties." The motion carried:

Aye: Babbage, Cobey, Gustafson, Matthews,
Stanton, Thurman.

No : None.

Not Present: Bradley, Levit, Shaw.

2. Effective Date of the 1959 Bill. The Commission then considered whether to (1) provide that the effective date of application of the general claims statute is deferred until

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the constitutional amendment is adopted, (2) make no provision as to effective date, thus making the statute effective as to all entities except chartered cities and counties on the effective date of all 1959 Session legislation and as to chartered cities and counties upon the adoption of the constitutional amendment or (3) have an express provision in the claims statute stating that it shall not take effect as to chartered cities and counties until the adoption of the constitutional amendment. After the matter was discussed a motion was made by Senator Cobey and seconded by Mr. Babbage that the third course of action be taken. The motion carried:

Aye: Babbage, Cobey, Gustafson, Matthews,
Stanton, Thurman.

No : None.

Not Present: Bradley, Levit, Shaw.

It was agreed to approve the proposed draft section relating to the effective date of the 1959 bill proposed by Mr. Kleps as revised to read as follows:

This act shall not take effect as to chartered counties, cities and counties and cities, until the adoption by the people of the State of California of an amendment to the Constitution of the State of California authorizing the Legislature to prescribe procedures governing the presentation, consideration and enforcement of claims against chartered counties, cities and counties and cities, and against officers, agents and employees thereof.

3. Consolidation and Location of Claims Provisions.

The Commission then considered Mr. Kleps' suggestion that the new claims statute, the provisions of the Government Code relating to claims against the State, and the provisions of the Government Code relating to claims against public officers and employees all be placed in one division of the Government Code. After the matter was discussed a motion was made by Mr. Babbage, seconded by Senator Cobey and unanimously adopted to consolidate all the claims provisions (Claims Against the State, Local Public Entities, Public Officers and Employees) in Division 3.5 of Title 1 of the Government Code.

4. Purpose Section. The Commission considered Mr. Kleps' proposed "Purpose Section." After the matter was discussed a motion was made by Senator Cobey, seconded by Mr. Thurman and unanimously adopted to approve the "Purpose Section" proposed by Mr. Kleps, subject to such modifications in form as might, upon further reflection, appear to be desirable. The Executive Secretary suggested that the purpose section might be revised to state two additional thoughts:

(1) A public entity is entitled to notice of any claim against it.

(2) The claims filing procedure is intended to provide such notice to the entity and not to give it a technical defense to claims covered. Hence the law relating to the filing of claims should be made easy to find and simple to follow. It was agreed

that the Executive Secretary should try his hand at incorporating these ideas into Mr. Kleps' purpose section and send a copy of his effort to Mr. Kleps for his comment.

5. Title of Article 1 of Chapter 2. The Commission then considered whether the title of Article 1 of Chapter 2 of Division 3.5 should be changed from "General" to "Application of Chapter." After the matter was discussed a motion was made by Mr. Babbage, seconded by Mr. Gustafson, and adopted to retain the designated title "General." Senator Cobey dissented.

The Commission then considered the various Sections in Chapter 2 of the Van Alstyne draft and Kleps draft. After the matter was discussed the following was agreed upon:

1. Section 700 Van Alstyne Draft--Section 700 Kleps Draft. After these were discussed it was decided that the general claims statute should contain a provision (as proposed by Mr. Kleps) which expressly states to what entities created by the State Chapter 2 of Division 3.5 applies and to what entities created by the State it does not apply. After prolonged discussion of the problem of how to provide an adequate test to ascertain whether a claim is subject to the provisions of Chapter 2, a motion was made and seconded to approve the following:

This chapter does not apply to claims which are to be paid directly from appropriations made by the Legislature.

The motion did not carry:

Aye: Thurman.

No : Babbage, Cobey, Gustafson, Stanton.

Pass: Matthews.

Not Present: Bradley, Levit, Shaw.

After further discussion it was tentatively agreed that the test of whether a claim is excluded from Chapter 2 should be stated in terms of whether or not it would be paid by the Controller's warrant.

It was also agreed that the qualification "whether chartered or not" should be eliminated from the definition section of the statute (now § 703).

2. Section 700.5 Van Alstyne Draft--Section 702.5 Kleps Draft. It was agreed that the general claims statute should contain a provision reading as follows:

Articles 1 and 2 of this chapter apply only to claims relating to causes of action which accrue subsequent to its effective date.

3. Section 701 Van Alstyne Draft--Section 702 Kleps Draft: It was agreed that the general claims statute should contain a provision reading as follows:

Articles 1 and 2 of this chapter apply to all claims for money or damages against public entities except:

Subdivisions (a) (b) (d) (e) (f) (g) as drafted by Professor Van Alstyne were approved.

Subdivision (c) is approved as revised to read:

(c) Claims by public officers and employees for fees, salaries, wages, mileage or other expenses and allowances.

A motion was made by Mr. Babbage and seconded by Senator Cobey to approve Section 701(h) and (i) of the Van Alstyne draft. The motion did not carry:

Aye: Babbage, Cobey, Gustafson, Matthews.

No : Stanton, Thurman.

Not Present: Bradley, Levit, Shaw.

A motion was made by Mr. Thurman and seconded by Mr. Stanton to approve the following as subsection (h) [this is Section 702(g) of the Kleps draft]:

(h) Claims against such entities which relate to a special assessment constituting a specific lien against the property assessed and which are payable from the proceeds of such an assessment, by offset of a claim for damages against it or by delivery of any warrant or bonds representing it.

The motion carried:

Aye: Babbage, Cobey, Gustafson, Matthews, Stanton, Thurman.

No : None.

Not Present: Bradley, Levit, Shaw.

The last subdivision was approved in the following form:

(i) Claims by the State or a department or agency thereof or by another public entity.

4. Section 702 Van Alstyne Draft--Section 703 Kleps Draft. It was agreed that the general claims statute should contain the following provision:

A claim against a local public entity presented in substantial compliance with any other applicable claims procedure established by or pursuant to a statute, charter or ordinance in effect immediately prior to the effective date of this chapter shall satisfy the requirements of Articles 1 and 2 of this chapter, if such compliance takes place before the repeal of such statute, charter or ordinance or before July 1, 1964, whichever occurs first, and Sections 709 and 715 of this chapter are applicable thereto.

5. Section 703 Van Alstyne Draft. Approved.

6. Section 705 Van Alstyne Draft. Section 705 was approved as revised:

705. Except as provided in Article 1 of this Chapter (commencing with Section 700), no suit may be brought for money or damages against a local public entity until a written claim therefor has been presented to the entity in conformity with the provisions of this article and has been rejected in whole or in part.

7. Section 706 Van Alstyne Draft. Approved.

8. Section 707(a)(b) Van Alstyne Draft--Section 707(b) McDonough Draft. A motion was made by Mr. Babbage and seconded by Mr. Gustafson to revise the first sentence of Section 707(a) to read as follows:

If in the opinion of the governing body of the local public entity a claim as presented fails to comply substantially with the requirements of Section 706 the governing body may give the person presenting the claim written notice of its insufficiency, stating with particularity the defects or omissions therein.

The motion carried:

Aye: Babbage, Cobey, Gustafson, Matthews, Thurman.

No : Stanton.

Not Present: Bradley, Levit, Shaw.

The second sentence was approved as revised to read:

Within ten days after receipt of the notice, the person presenting the claim may present an amended claim which shall be considered a part of the original claim for all purposes.

A motion was made by Mr. Gustafson and seconded by Senator Cobey to approve the last sentence of Section 707(a) as revised to read:

A failure or refusal to present a corrected or amended claim shall not constitute a defense to any action brought upon the cause of action for which the claim was presented if the court finds that the claim as presented did comply substantially with Section 706.

The motion carried:

Aye: Babbage, Cobey, Gustafson, Matthews, Thurman.

No : Stanton.

Not Present: Bradley, Levit, Shaw.

A motion was made by Mr. Gustafson and seconded by Mr. Babbage to approve Section 707(b) of the Van Alstyne draft as revised to read:

(b) In any suit upon a cause of action for which a claim has been presented, the local public entity may assert as a defense that the claim did not comply substantially with the requirements of Section 605 unless such defense has been waived. Any defense based upon a defect or omission in a claim is waived by failure of the governing body to give notice of insufficiency with respect to such defect or omission, except that no notice need be given and no waiver shall result when the claim fails to state the residence or business address of the person presenting it.

The motion carried:

Aye: Babbage, Cobey, Gustafson, Matthews, Stanton, Thurman.

No : None

Not Present: Bradley, Levit, Shaw.

9. Section 708. Section 708 of the Van Alstyne draft was approved with the following minor changes:

(a) The word "one" should be inserted before the word "hundred."

(b) The figure "708" should be deleted.

10. Section 709(a) and (b). Section 709(a) was approved as revised to read:

(a) The superior court of the county in which the local public entity has its principal office shall grant leave to present a claim after the expiration of the time specified in Section 708, if the entity against which the claim is made will not be unduly prejudiced thereby, where no claim was presented during such time and where

(1) Claimant was less than 16 years of age during all of such time, or

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

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

The Commission then considered that portion of Section 709(b) which relates to the evidence which the court may consider in passing on the application. After the matter was discussed a motion was made by Mr. Bradley and seconded by Mr. Matthews to approve the last sentence as revised to read:

The application shall be determined upon the basis of the verified petition, any affidavits in support of or in opposition thereto, and any additional evidence received at such hearing.

The motion did not carry:

Aye: Bradley, Gustafson, Matthews, Thurman.

No : Babbage, Cobey, Stanton.

Not Present: Levit, Shaw.

Mr. Babbage suggested that Professor Van Alstyne should be asked to give subsection (b) further consideration, with these questions in mind:

1. Whether there should be provision requiring the filing of a responsive pleading or a counter affidavit.

2. Whether any affidavit filed by the applicant should be required to be served with the petition.

3. Whether there should be a requirement that any counter affidavits be served within a specified time prior to the

hearing.

4. Whether there should be provisions prescribing the procedure at the hearing.

After this suggestion was discussed the Commission decided to reconsider Mr. Bradley's motion. The motion then carried:

Aye: Bradley, Cobey, Gustafson, Matthews,
Stanton, Thurman.

No : Babbage.

Not Present: Levit, Shaw.

A motion was made by Mr. Gustafson and seconded by Mr. Thurman to delete the last sentence of Section 709(b) relating to the appealability of the order. The motion carried:

Aye: Babbage, Bradley, Gustafson, Matthews,
Thurman.

No : Cobey, Stanton.

Not Present: Levit, Shaw.

11. Section 710. Section 710 of Professor Van Alstyne's draft was approved with the last two sentences revised to read as follows:

Notice of any action taken under this section shall be given in writing by the clerk or secretary of the local public entity to the person who presented the claim. Action taken under this section shall be final and may not be reconsidered by the governing body, but nothing herein shall prohibit the governing body from compromising any suit based upon the cause of action which the claim relates.

12. Section 711. A motion was made by Senator Gobey and seconded by Mr. Gustafson to approve Section 711 of Professor Van Alstyne's draft. The motion carried:

Aye: Bradley, Cobey, Gustafson, Matthews, Stanton, Thurman.

No : None.

Not Present: Babbage, Levit, Shaw.

13. Sections 712 and 713. A motion was made by Mr. Gustafson and seconded by Mr. Matthews to approve Sections 712 and 713 of Professor Van Alstyne's draft. The motion carried:

Aye: Bradley, Cobey, Gustafson, Matthews, Stanton, Thurman.

No : None.

Not Present: Babbage, Levit, Shaw.

14. Section 714. A motion was made by Senator Cobey and seconded by Mr. Gustafson to approve Section 714 in Professor Van Alstyne's draft as revised to read:

714. In any case in which suit may be maintained under Section 713 neither the amount set forth in the claim nor any amendment thereto nor any action taken on such claim shall constitute a limitation upon the amount which may be pleaded, proved or recovered.

The motion carried:

Aye: Babbage, Bradley, Cobey, Gustafson, Matthews, Stanton, Thurman.

No : None.

Not Present: Levit, Shaw.

15. Sections 715 and 716 Van Alstyne Draft. Approved.

16. Section 720 Van Alstyne Draft. A motion was made by Senator Cobey and seconded by Mr. Babbage to approve Section 720 with the following minor revisions:

(a) The phrase "for money or damages" is inserted after the first "local public entity."

(b) The word "thereunder" is deleted from the end of the Section and the words "governed thereby" are inserted in its place.

The motion carried:

Aye: Babbage, Bradley, Cobey, Gustafson,
Matthews, Stanton, Thurman.

No : None.

Not Present: Levit, Shaw.

The Commission then considered Chapter 3 of Division 3.5 as drafted by Professor Van Alstyne, relating to presentment of claims as a prerequisite to suit against public officers or employees. During the discussion the question was raised as to whether Chapter 3 should consist of present Sections 1980, 1981 and 1982 of the Government Code or whether the Commission should revise these sections substantively in the course of transferring them, as proposed by Professor Van Alstyne. A motion was made by Mr. Gustafson and seconded by Mr. Babbage that Sections 1980-1982 be transferred verbatim to Chapter 3 of Division 3.5. The motion carried:

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Aye: Babbage, Bradley, Cobey, Gustafson,
Matthews, Thurman.

No : Stanton.

Not Present: Levit, Shaw.

A motion was made and seconded to include in the Commission's recommendation a statement to the effect that the Commission intends to continue this study and submit a recommendation later on the sections relating to claims against public officers or employees which are being transferred to Chapter 3. The motion carried:

Aye: Babbage, Bradley, Cobey, Gustafson,
Matthews, Stanton, Thurman.

No : None.

Not Present: Levit, Shaw.

The Commission then considered Professor Van Alstyne's proposed revision of Chapter 4 of Division 3 of Title 3 of the Government Code (commencing at Section 29700). As his various proposals were discussed the following matters were agreed upon:

1. Sections 29700 and 29701. Section 29700 was approved and Section 29701 was approved after "presented" was inserted in place of "filed with the clerk or auditor."
2. Sections 29702, 29703, 29704. Approved.
3. Section 29705. The Commission first considered whether the portion of Section 29705 (as drafted by Professor Van Alstyne) which grants the governing board the power to adopt forms for the submission and payment of claims for money due under the terms of express contract should be broadened to give the board power to adopt forms for claims for money due under implied contract and for money due for wages, salaries, fees, mileage and other allowable expenses of public officers and employees. During this part of the discussion it was tacitly assumed that the forms authorized to be adopted could be made applicable to claims governed by the new claims statute and there was considerable discussion of whether and how the language should be drafted to limit the kinds of such claims as to which the board should have such power. The discussion then turned to whether all claims to which the new claims statute is applicable should be excepted from Section 29705. After this question was discussed a motion was made by Senator Cobey and seconded by Mr.

Babbage to direct the Executive Secretary to redraft this portion of Section 29705 to except therefrom claims which come within Articles 1 and 2 of Chapter 2. It was also agreed that the limiting phrase "under the terms of express contract" should be eliminated. The motion carried:

Aye: Babbage, Bradley, Cobey, Gustafson,
Matthews, Stanton, Thurman

No : None

Not Present: Levit, Shaw

NOTE: There is a difference in the recollection of the members of the Staff who attended the meeting as to whether the Commission decided to eliminate

"under the terms of express contract"

from Section 29705 or whether it decided to broaden the language to read substantially as follows:

"under express or implied contracts or for wages, salaries, fees, mileage and other allowable expenses of public officers and employees."

4. Section 29706. Approved with minor revisions:

(a) "or demand" is deleted from the first and second sentences.

(b) "for" is inserted in place of "other."

5. Section 29707. Section 29707 is approved as revised to read:

29707. Except for his own service, no county officer or employee shall present any claim for allowance against the county. No county officer or employee shall in any way, except in the discharge of his official duty, advocate the relief asked in a claim made by any other person.

6. Section 29709. Approved after "receiving" substituted for "filing."

7. Section 29741. Approved.

8. Section 29744. A motion was made by Senator Cobey, seconded by Mr. Babbage and unanimously adopted to approve the section as revised by Professor Van Alstyne with the deletion of "originally."

9. Section 29748. Approved.

The Commission then considered additional statutes relating to claims against counties and districts which were revised to be uniform with the new general claims statutes. After the matter was discussed, Professor Van Alstyne's proposals for enactment or revision of the following sections of the Codes were approved:

Section 439.56 of the Agricultural Code.
Section 342 of the Code of Civil Procedure.
Section 53052 of the Government Code.
Section 945 of the Military and Veterans Code.
Section 37200 of the Government Code.
Section 39586 of the Government Code.
Section 1007 of the Education Code.
Section 1018 of the Education Code.
Section 14163.5 of the Health and Safety Code.
Section 14164 of the Health and Safety Code.

It was agreed to approve the repeal of Section 53053 of the Government Code.

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It was agreed that no revision of the following provisions is necessary by virtue of enactment of the new general claims statute:

Section 20497 of the Education Code.
Section 257 of the Health and Safety Code.
Section 13052 of the Health and Safety Code.

It was agreed to approve the following sections with minor revisions as indicated:

1. Section 37201 of the Government Code with insertion of "for money or damages" after "Demands against the city."

2. Section 6370 of the Harbors and Navigation Code with deletion of "and demands" and "or demand" where these appear and addition of sentence "All claims not governed thereby should be filed with the auditor on forms and blanks prescribed by him" after the first sentence.

3. Section 6960 of the Harbors and Navigation Code with insertion of sentence "All claims not governed thereby should be filed with the auditor on forms and blanks prescribed by him" after the first sentence.

A motion was made by Senator Cobey, seconded by Mr. Babbage and unanimously adopted to authorize the Chairman and Executive Secretary to put the remaining sections proposed for enactment or revision by Professor Van Alstyne in final form and draft the Commission's recommendation.

Respectfully submitted,

John R. McDonough, Jr.
Executive Secretary

CALIFORNIA LEGISLATURE
SENATE COMMITTEE ON JUDICIARY

October 27, 1958

Mr. John R. McDonough, Jr.
California Law Revision Commission
School of Law
Stanford, California

Dear John:

In reviewing my files I find that the question of a review of the law relating to bail was assigned to the Law Revision Commission (ACR 67). Also, that the Uniform Post-Conviction Procedure Act (S.B. 816 and A.B. 986) was likewise assigned to the Commission.

I note that neither of these items is on your legislative program for the 1959 session as listed in your letter of October 14, 1958. Am I correct in assuming that you will not proceed on these two matters prior to 1961? If so, it would seem to me to be sensible to have bills introduced on the respective subjects and thereafter automatically referred to the Senate Interim Judiciary Committee so the Committee will have something before it during the next interim period. I am inclined to believe that the same procedure might well be followed on other matters pending before your commission, primarily for the reason that in this manner the subject matter of what you are studying can remain on the Committee agenda and be from time to time reviewed. There is, of course, no anticipation of the Committee duplicating work which has been assigned to the Law Revision Commission unless for some reason or another a particular emergency might require different treatment.

Best regards,

S/ John
JOHN A. BOHN

JAB:s

November 4, 1958

WHEREAS, the California Law Revision Commission has learned of the death of Honorable Jess R. Dorsey, Member of the Senate of the California Legislature from the 34th Senatorial District; and

WHEREAS, Senator Dorsey was appointed by the Senate Rules Committee as the first Senate member of the Law Revision Commission and served in that capacity for over three years until the pressure of his other public duties made it necessary for him to resign from the Commission; and

WHEREAS, Senator Dorsey's counsel was invaluable in the organization of the Commission and in planning and carrying forward its work during the critical first years of the Commission's existence; and

WHEREAS, drawing upon his long experience as a member of the Bar, both as attorney and as public prosecutor, Senator Dorsey contributed significantly to the analysis of problems under consideration by the Commission and to the formulation of legislative measures to eliminate antiquated and inequitable rules of law and to bring the law of California into harmony with modern conditions; and

WHEREAS, Senator Dorsey performed invaluable service to the Commission during Sessions of the Legislature by introducing and carrying bills recommended by the Law Revision Commission and by handling in the Senate other Commission bills introduced in the Assembly; and

WHEREAS, Senator Dorsey was at all times a stimulating and engaging member of the California Law Revision Commission, who won not only the high regard but the warm affection of its members

NOW, THEREFORE, the California Law Revision Commission hereby records its sadness at Senator Dorsey's passing, its appreciation for his service as a member of the Commission, and its tribute to his long and honored career in the public service of the people of the State of California

CALIFORNIA LAW REVISION COMMISSION

Sacramento, California
October 24, 1958

Prof. Arvo Van Alstyne
University of California at
Los Angeles
Law School
Los Angeles, California

Dear Arvo:

Since I am convinced that the Claims Study and the statutes which will be submitted to the 1959 session of the Legislature are vitally important, I have been devoting a substantial amount of time to checking it over during the last few days. I propose to devote some more time to it if possible before the November meeting of the Commission with the thought that we will be better off if as many problems are raised before introduction as can be identified. The attached memorandum indicates some of the questions which have occurred to me. I realize that some of the suggestions that I am making will require the Commission to re-examine its prior decisions, but I am sure they would be willing to do so if the point is of merit.

In checking over the minutes I note that the point I made the other day concerning unemployment insurance has already been considered by the Commission and rejected. Upon further reflection I think that my point was not well taken and can be ignored.

With your permission, I will continue to ship off suggestions which I think merit your consideration.

Regards,

Ralph N. Kleps
Ex Officio Member

RNK:r

cc: Prof. John R. McDonough

COMMENTS CONCERNING PROPOSED CONSTITUTIONAL
AMENDMENT

1. As nearly as I can tell, the only constitutional obstacle to the Legislature's exercise of power in the claims field arises from the charter provisions of Article XI of the Constitution. Since this is the only area where a limitation on the Legislature's power must be lifted, shouldn't the new constitutional amendment be aimed specifically at the provision of the Constitution which must be surmounted? Otherwise, we run the risk of eliminating some constitutional provisions which we do not want to eliminate, e.g. the requirement that the Legislature act by laws of general application (cf. Secs. 31a and 31c of Article IV, and Sec. 11 of Article VI).

Suggestion: Add a new section 10 to Article XI providing that nothing in the article limits the Legislature.

2. There is no need to refer in the Constitution to "districts, authorities, and other political subdivisions of the State." I know of no provision for local home rule in the form of charters except as authorized in Article XI for counties, cities and counties and cities.

Suggestion: Eliminate the reference to government entities which do not have charter powers.

3. Some provision must be made so that the constitutional amendment and the new claims statute become operative at the same time. This could be done by having the constitutional amendment ratify the claims statute and make it operative. It could also be done by deferring the effective date of the claims statute until the constitutional amendment takes effect. One solution or the other should be adopted, however, in order to avoid having the claims procedure effective only as to matters of statewide concern, leaving the existing provisions of law applicable to "municipal affairs" until the time the constitutional amendment authorizes the Legislature to invade the area of home rule. This type of partial effectiveness of the new claim statute would be highly undesirable.

Suggestion: Key the effective date of the statute to the constitutional amendment.

4. This constitutional provision is subject to the challenge that it authorizes the Legislature to invade an area of local home rule which is as clearly a matter of municipal concern as could be imagined, e.g. presentation of claims by vendors, payment of wage claims to employees, filing of claims by retired employees. I know that the statute as presently drafted excludes some of these matters from coverage, including such matters as auditing and internal fiscal controls. But the very fact that the Legislature excludes these areas from the particular statute is proof of the fact that the Legislature could superimpose its will upon the local governing bodies if it chose to do so in areas which are clearly of primary local concern. I do not know of any remedy for this objection, but it seems to me that it should be kept in mind because it will almost certainly be offered by anyone opposing the concept of sacrificing local home rule in order to achieve a uniform claims procedure. That is to say, the Constitution would hereafter authorize the Legislature to go far deeper into matters of home rule than this particular claim statute goes. Do we have an answer to this contention?

Proposal

Add Section 10 to Article XI, to read:

"Section 10. No provision of this article shall limit the power of the Legislature to prescribe procedures governing the presentation, consideration and enforcement of claims against counties, cities and counties and cities, or against officers, agents and employees thereof."

COMMENTS ON COVERAGE OF NEW CLAIMS STATUTE -

STATE OF CALIFORNIA

1. Why not start off with a "purpose" clause stating policy behind the law, e.g. diversity of procedures with local governments, districts, etc., and need to achieve a simple, uniform, statewide procedure. Follow pattern of Brown "secret meeting" act (Gov. C. Sec. 54950).
2. The definition section referring to "public entity" is crucial and should be next after the purpose clause. Since the State and its agencies are excluded why not use "local public entity" throughout; it will reflect the proper coverage in each section and will promote clarity.
3. There's no need to use "city and county"; Gov. Code, Sec. 20, takes care of it. "Whether chartered or not" can be phrased so as to refer only to cities and counties, which is the correct reference. "Local authority" is preferable to "authority," in my opinion. It would probably include State authorities which are local in operation (housing authorities, redevelopment agencies, etc.) while not picking up such agencies as the San Francisco Port Authority or Toll Bridge Authority (Governor's appointees).

Suggestion: "Local public entity" includes any county or city, whether chartered or not, and any district, local authority or other political subdivision of the State."

4. The exclusion for the "State" is not sufficiently explicit. Why not follow Government Code, Section 11000.

Suggestion: "Local public entity" does not include the State or any office, officer, department, division, bureau, board, commission or agency thereof.

5. I think a cross-reference in the new statute to the procedure in Section 16000, et seq. of the Government Code is desirable, and that a further exclusion of state claims should be added as part of the cross-reference.

Suggestion: A separate section cross-referring to Section 16000, et seq. and eliminating those claims, i.e. an exclusion by "kind of claim" as well as by entity.

Proposal

"Sec. 601. As used in this chapter 'local public entity' includes any county or city, whether chartered or not, and any district, local authority, or other political subdivision of the State, but does not include the State or any office, officer, department, division, bureau, board, commission or agency thereof."

"Sec. _____ This chapter does not apply to claims which are to be paid directly from appropriations made by the Legislature, including but not limited to claims against the State governed by Part 1 (commencing with Section 16000), Division 4, Title 2 of the Government Code."

Sacramento, California
October 31, 1958

Prof. Arvo Van Alstyne
University of California at Los Angeles
Law School
Los Angeles, California

Dear Arvo:

I am sending along a final batch of material with respect to the Claims Statute. The last item is a rough compilation of the series of suggestions I have made within the last week or so. I have sent copies of this material to John McDonough, with the thought that he might find some time to go over it also. I hope that you both will treat it as rough draft suggestions only, since I did not take the time to polish the material sent along.

As you will note, my concern has been primarily in the area of application of the new statute and coverage of types of claims and types of governmental entities. This strikes me, frankly, as one of the most complicated problems in adjustment which I have ever seen, and no matter how much effort we devote to it, I am pretty sure that we will get some new ideas the first time city attorneys and county counsels have a chance to go over the material.

Regards,

Ralph N. Kleps
Ex Officio Member

RNK:r

cc: Prof. John R. McDonough

COMMENT ON CLAIMS PROCEDURE FOR LOCAL PUBLIC
ENTITIES AS TO CLAIMS EXEMPTED BY SECTION 600

A. Counties

(1) Must there be a statutory delegation of authority to permit counties, chartered and non-chartered, to provide their own "claims procedure" for claims not covered by new statute or by other specific statutes?

Despite the comment on page 12 of the Study, I suspect that a chartered county could handle this in the absence of state law (Cf. Santa Clara County Charter, Stats. 1951, p. 4663; Thompson case, fn. 33; and Hafliger v. County of Sacramento, 97 C.A. 2d 850, 853.) But could a non-chartered county do so? Study doesn't indicate any county ordinances at the present time so perhaps not. Thus, I think a general provision should be added in a separate article of the new claims statute which specifically authorizes counties to devise their own procedure for "exempted claims" along the lines approved at Coronado meeting for the new Section 29701 of the Government Code. It shouldn't be limited (e.g. to only wage claims and public assistance supplies).

(2) Assuming that 1 (above) is done, then the revised material commencing at Section 29700 of the Government Code should apply to all county claims (both the ones covered by state law and the ones covered by local procedures). Both Article 1 and Article 2 of the existing "county claims statute" should be revised so as to deal with obligations of the county and its officers in processing claims, rather than with obligations of claimants.

B. Cities, Cities and Counties, and Districts

(1) In the absence of state law, chartered cities could undoubtedly handle claims procedure as a "municipal affair," but what about general law cities? It would seem that a general authorization to cities, along the line already suggested for counties would be appropriate. It would do no harm with chartered cities and would clarify the situation with respect to general law cities. Further, the limitation that the period for presenting claims cannot be shorter than the period in the new general claims statute would then cover all cities and all claims procedure.

(2) The same theory supports a general delegation to districts and other local public entities.

PROPOSAL

(1) Write a new article for the general claims statute authorizing local public entities to prescribe their own procedures for all claims not covered by state law, along the following lines:

"Art. _____. Claims Procedures Established by Local Public Entities.

"Sec. _____. Claims against a local public entity which are exempted from Article 1 of this chapter, and not governed by any other procedure specified by state law, shall be subject to the procedure prescribed in any charter, ordinance or regulation adopted by such an entity pursuant to law. The procedure so prescribed may include a requirement that a claim be presented and rejected as a prerequisite to suit thereon, but may not require a shorter time for presentation of any claim than the time provided in Section 607 of this code, and Sections 608 and 609 of this code shall be applicable to all claims thereunder."

(2) With respect to counties, the revised Section 29701 (as approved at Coronado) would be unnecessary and can be eliminated. A new Section 29700 should be drafted along the following lines:

"Sec. 29700. This chapter applies to all claims for money or damages against counties, including those claims subject to Articles 1 and _____ (commencing with Section 600) of this code."

COMPILATION OF SUGGESTIONS MADE RE COVERAGE OF
NEW CLAIMS STATUTE

1. Constitutional Provision (Art. XI)

"Section 10. No provision of this article shall limit the power of the Legislature to prescribe procedures governing the presentation; consideration and enforcement of claims against counties, cities and counties and cities, or against officers, agents and employees thereof."

2. Effective Date of 1959 Bill

"Sec. _____. This act shall take effect upon adoption by the people of the State of California of an amendment to the Constitution of the State of California authorizing the Legislature to prescribe procedures governing the presentation; consideration and enforcement of claims against counties, cities and counties and cities, or against officers, agents and employees thereof."

3. Purpose Section

"Sec. _____. In enacting this division, the Legislature finds that a bewildering diversity of procedures exists with respect to the presentation of claims to local public entities, and that substantial injustices have occurred due to the inability of persons dealing with government agencies to follow the proper procedures within the limited periods of time afforded. It is the purpose of the Legislature to establish uniform, general requirements with respect to the presentation, consideration and enforcement of claims to the end that all persons will be able to present claims which they may have against governmental agencies in accordance with a clear and simplified procedure."

4. Proposed General Claims Statute

DIVISION 3.5. CLAIMS AGAINST THE STATE, LOCAL
PUBLIC ENTITIES, AND OFFICERS AND EMPLOYEES

CHAPTER PART 1. CLAIMS AGAINST THE STATE

Article CHAPTER 1. General

16000 600. As used in this part, "board" means the State Board of Control. Cross-ref-
erences to
be corrected

16001 601. Claims for expenses of either house of the Legislature or members or committees thereof, and claims for official salaries fixed by statute, are exempt from this chapter and Section 13920.

16002 602. Any person having a claim against the State for which appropriations have been made, or for which state funds are available, may present it to the Controller in the form and manner prescribed by the general rules and regulations adopted by the board for the presentation and audit of claims.

16003 603. The Controller shall not draw his warrant for any claim until it has been audited by him in conformity with law and the general rules and regulations adopted by the board, governing the presentation and audit of claims. Whenever the Controller is directed by law to draw his warrant for any purpose, the direction is subject to this section, unless it is accompanied by a special provision exempting it from this section.

16004 604. If the Controller approves a claim he shall draw his warrant for the amount approved in favor of the claimant.

16005 605. If he disapproves a claim, he shall file it and a statement of his disapproval and his reasons with the board as prescribed in the rules and regulations of the board.

16006 606. The Controller shall not entertain for a second time a claim against the State once rejected by him or by the Legislature unless such facts are subsequently presented to the board as in suits between individuals would furnish sufficient ground for granting a new trial.

16007 607. Any person who is aggrieved by the disapproval of a claim by the Controller, may appeal to the board. If the board finds that facts are presented justifying such action, the Controller shall reconsider his rejection of the claim.

16008 608. After final rejection of a claim by the Controller following reconsideration any person interested may appeal to the Legislature by filing with the board a notice of appeal. Upon receipt of such notice the board shall transmit to the Legislature the rejected claim, all papers accompanying it, and a statement of the evidence taken before the board.

16009 609. Whenever a governmental agency of the United States, in the collection of taxes or amounts owing to it, is authorized by federal law to levy administratively on credits owing to a debtor, it may avail itself of the provisions of this section and claim credits owing by the State to such debtor, in manner as follows:

It shall file a certification of the facts with the state department, board, office or commission owing such credit to said debtor prior to the time said state agency presents the claims of such debtor therefor to the State Controller or to the State Personnel Board. Said state agency in presenting the claim of the debtor shall note thereon the fact of the filing of such certificate and shall also note any amounts owed by the debtor to the State by reason of advances or for any other purpose.

Subject to the provisions of Section 12419.5 of this code, the State Controller shall issue his warrant payable to the United States Treasurer for the net amount due the debtor, after offsetting for any amounts advanced to the debtor or by him owing to the State, or as much thereof as will satisfy in full the amount owing by the debtor to the United States as so certified; any balance shall be paid to the debtor.

Article CHAPTER 2. Filing With State Board of Control

16020 620. There shall be presented to the board and it shall audit claims against the State for which settlement is provided by law but for which:

- (a) No appropriation has been made,
- (b) No fund is available, or
- (c) An appropriation or fund has been exhausted.

Upon approval of such a claim by unanimous vote of the board, it shall with the consent of the Governor be transmitted to the Legislature with a brief statement of the reasons for approval.

~~16021~~ 621. Any person having a claim against the State, the settlement of which is not otherwise provided for by law, shall present it to the board at least four months before the meeting of the Legislature, accompanied by a statement showing the facts constituting the claim, and verified in the same manner as complaints in civil actions. Notice of the time and place of hearing shall be mailed to the claimant at least 15 days prior to the date set for final action by the board.

~~16022~~ 622. At the time designated the board shall examine and adjust such claims. It may hear evidence for and against them and, with the approval of the Governor, report to the Legislature such facts and recommendations concerning them as it deems proper. In making recommendations the board may state and use any official or personal knowledge which any member may have touching any claim.

~~16023~~ 623. Upon the allowance by the board of all or part of a claim arising under Section 400 of the Vehicle Code, and the execution and presentation of documents in such form as the board prescribes, which discharge the State of all liability under the claim, the claim so allowed shall be paid in accordance with law out of money appropriated or collected for payment of such claims.

~~16024~~ 624. If the State elects to insure its liability, the board may automatically deny any claim covered by insurance.

Article CHAPTER 3. Actions

~~16040~~ 640. This chapter is not applicable to actions on claims for the taking or damaging of private property for public use, within the meaning of Section 14 of Article I of the Constitution, which were pending prior to September 13, 1941.

~~16041~~ 641. Any person who has a claim against the State (1) on express contract, (2) for negligence, or (3) for the taking or damaging of private property for public use within the meaning of Section 14 of Article I of the Constitution, shall present the claim to the board in accordance with Section 16021: If the claim is rejected or disallowed by the board, the claimant may

bring an action against the State on the claim and prosecute it to final judgment, subject to the conditions prescribed by this chapter.

~~16042~~ 642. Except as otherwise provided in this chapter, the rules of practice in civil actions apply to all actions brought under this chapter.

~~16043~~ 643. A claim arising under Section 400 of the Vehicle Code shall be presented to the board within one year after the claim first arose or accrued. An action on such a claim shall be brought either within the time prescribed by the Code of Civil Procedure within which such an action may be brought or within six months after the claim is rejected or disallowed in whole or in part.

~~16044~~ 644. A claim not arising under Section 400 of the Vehicle Code shall be presented to the board within two years after the claim first arose or accrued. An action on such a claim shall be brought within six months after the claim is rejected or disallowed in whole or in part.

~~16045~~ 645. An action may not be maintained on a portion of a claim arising under Section 400 of the Vehicle Code, but if the amount allowed is not accepted in full settlement of the claim and an action is brought, it shall be brought on the entire claim and the allowance is ineffective. If any other claim is rejected or is allowed only in part, an action may be maintained only on the portion of the claim rejected or disallowed.

~~16046~~ 646. Claims of a minor or insane person, a person imprisoned on a criminal charge or undergoing execution of sentence of a criminal court, a married woman if her husband is a necessary party with her in commencing action thereon, or an incompetent person shall be presented to the board as prescribed by this chapter within two years after the disability ceases. An action on such a claim shall be brought within six months after the claim is rejected or disallowed in whole or in part by the board.

~~16047~~ 647. At the time of filing the complaint in any action against the State, the plaintiff shall file therewith an undertaking in such sum, but not less than five hundred dollars (\$500), as a judge of the court shall fix, with two sufficient sureties, to be approved by a judge of the court. The undertaking shall be conditioned upon payment by the plaintiff of all costs incurred by the State in the suit, including a reasonable counsel fee to be fixed by the court, if plaintiff fails to recover judgment in the action.

~~16048~~ 648. In actions for the taking or damaging of private property for public use within the meaning of Section 14 of Article I of the Constitution on claims arising out of work

done by the Department of Public Works:

(a) Service of summons shall be made on the Director of Public Works.

(b) The defense shall be conducted by the attorney for the department.

~~16049~~ 649. Except actions in which service is required to be made on the Director of Public Works:

(a) Service of summons shall be made on the Governor and Attorney General.

(b) The Attorney General shall defend all actions on claims against the State.

~~16049.5~~ 649.5. Notwithstanding the provisions of Sections 16048 and ~~16049~~, in actions for the taking or damaging of private property for public use within the meaning of Section 14 of Article I of the Constitution on claims arising out of work done by the Department of Water Resources:

(a) Service of summons shall be made on the Director of Water Resources and the Attorney General.

(b) The defense shall be conducted by the legal counsel of the department, if authorized by the Attorney General pursuant to Section 127 of the Water Code; otherwise the defense shall be conducted by the Attorney General.

~~16050~~ 650. The proper court for trial of actions for the taking or damaging of private property for public use is a court of competent jurisdiction in the county in which the property is situate.

Upon written demand of the Attorney General made on or before answering, the place of trial in other actions shall be changed to Sacramento County.

~~16051~~ 651. If judgment is rendered for the plaintiff, it shall be for the legal amount actually found due from the State to the plaintiff, with legal interest from the time the claim or obligation first arose or accrued, and without costs.

~~16052~~ 652. Without presentation to or approval by the Board, the Controller shall draw his warrant for the payment of any judgment against the State upon a claim arising under Section 400 of the Vehicle Code upon money appropriated by the Legislature or collected from special funds for the payment of such claims.

16053 653. The Controller shall draw his warrant for the payment of any other judgments against the State whenever a sufficient appropriation for such payment exists. Claims upon such judgments are exempt from Section 16003.

16054 654. The Governor shall report to the Legislature, at each session, all judgments against the State upon claims not arising under Section 400 of the Vehicle Code and not theretofore reported.

CHAPTER 2. CLAIMS AGAINST LOCAL PUBLIC ENTITIES

Article 1. General

700. This chapter does not apply to claims which are to be paid directly from appropriations made by the Legislature, including but not limited to claims against the State governed by Chapter 1 of this division.

701. As used in this chapter, "local public entity" includes any county or city, whether chartered or not, and any district, local authority or other political subdivision of the State, but does not include the State or any office, officer, department, division, bureau, board, commission or agency thereof.

702. Articles 1 and 2 of This article applies this chapter apply to all claims for money or damages against local public entities except:

(a) Claims against such entities under the Revenue and Taxation Code or other provisions of law prescribing procedures for refund, rebate, exemption, cancellation, amendment, modification or adjustment of any tax, assessment, fee or charge or any portion thereof, or of any penalties, costs or charges related thereto.

(b) Claims against such entities in connection with which the filing of a notice of lien, statement of claim, or stop notice is required under any provision of law relating to mechanics', laborers' or materialmen's liens.

(c) Claims against such entities by public officers and employees for wages, salaries, fees, mileage or other expenses and allowances, including claims for workmen's compensation under Division 4 of the Labor Code and claims for money or benefits under any public retirement or pension system.

(d) Applications or claims against such entities for any form of public assistance under the Welfare and Institutions Code or other provisions of law relating to public assistance programs, and claims for goods, services, provisions or other assistance rendered for or on behalf of any recipient of any form of public assistance.

(e) Claims against such entities for principal or interest upon any bonds, notes, warrants or other evidence of indebtedness.

(f) Claims, petitions or estimates of damages against such entities required by law to be presented in the course of proceedings relating to the determination of benefits, damages or assessments in connection with any public improvement project.

(g) Claims against such entities which relate to a special assessment constituting a specific lien against the property assessed and which are payable from the proceeds of such an assessment, by offset of a claim for damages against it or by delivery of any warrant or bonds representing it.

(h) Claims against such entities by the State or a department or agency thereof or by another public entity.

702.5. Articles 1 and 2 of This-article-applies this chapter apply only to claims relating to causes of action which accrue subsequent to its effective date.

703. A claim against a local public entity presented in substantial compliance with any other applicable claims procedure established by or pursuant to a statute, charter or ordinance in effect immediately prior to the effective date of this act shall satisfy the requirements of Articles 1 and 2 of this chapter this-article, if such compliance takes place before the repeal of such statute, charter or ordinance or before July 1, 1964, whichever occurs first.

704. The governing body of a local public entity may authorize the inclusion in any written agreement to which the entity, its governing body, or any board or officer thereof in an official capacity is a party, of provisions governing the presentation, consideration or payment of any or all claims arising out of or related to the agreement by or on behalf of any party thereto. A claims procedure established by agreement pursuant to this section exclusively governs the claims to which it relates, except that the agreement may not require a shorter time for presentation of any claim than the time provided in Section 713, and Sections 714 and 715 are applicable to all claims thereunder.

Article 2. Claim as Prerequisite to Suit
Against Local Public Agencies

710 - 716. [No substantial change in draft Sections
604 - 610]

Article 3. Claims Procedures Established
by Local Public Entities

720. Claims against a local public entity which are exempted from Articles 1 and 2 of this chapter, and not governed by any other procedure specified by state law, shall be subject to the procedure prescribed in any charter, ordinance or regulation adopted by such an entity pursuant to law. The procedure so prescribed may include a requirement that a claim be presented and rejected as a prerequisite to suit thereon, but may not require a shorter time for presentation of any claim than the time provided in Section 713 of this code, and Sections 714 and 715 of this code shall be applicable to all claims thereunder.

CHAPTER 3. PRESENTMENT OF CLAIM OR PREREQUISITE
TO SUIT AGAINST PUBLIC OFFICER OR EMPLOYEE.

800 - 803. [Same as draft Sections 700-703]

4. County Claims Statute Revision

Add a provision specifying application of the county claims statute, as indicated below. Otherwise follow Sections 29702 - 29749 as approved at October meeting.

"Sec. 29700. This chapter applies to all claims for money or damages against counties, including those claims subject to Articles 1 and 2 of Chapter 2 (commencing with Section 700) of Division 3.5, Title 1 of this code."

5. Code of Civil Procedure Cross-Reference

Proposal:

"Sec. 313. The general procedure for the

presentment of claims against the State of California, counties, cities, cities and counties, districts, local authorities, and other political subdivisions of the State, and against the officers and employees thereof, is prescribed by Division 3.5 (commencing with Section 600) of Title 1 of the Government Code.

37(L)
Claims

11/5/58
JRM

Proposed Revision of Section 707(b)

In any suit upon a cause of action for which a claim has been presented, ~~unless such defense has been waived,~~ the local public entity may assert as a defense that the claim did not, either as originally presented or as corrected or amended, comply substantially with the requirements of Section 605 unless such defense has been waived. Any defense based upon a defect or omission in a claim or a corrected or amended claim is waived by failure of the governing body to give notice of insufficiency with respect to such defect or omission, except that no notice need be given and no waiver shall result when the claim fails to give state the residence or business address of the person presenting it.