

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

1964 Annual Report

December 1963

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

NOTE

This pamphlet begins on page 201. The Commission's annual reports and its recommendations and studies are published in separate pamphlets which are later bound in permanent volumes. The page numbers in each pamphlet are the same as in the volume in which the pamphlet is bound. The purpose of this numbering system is to facilitate consecutive pagination of the bound volumes.

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SCHOOL OF LAW
STANFORD UNIVERSITY
STANFORD, CALIFORNIA



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Assistant Executive Secretary
JON D. SMOCK
Associate Counsel

December 31, 1963

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

The California Law Revision Commission herewith submits this
report of its activities during the year 1963.

Respectfully submitted,

HERMAN F. SELVIN
Chairman

TABLE OF CONTENTS

	Page
FUNCTION AND PROCEDURE OF COMMISSION	207
PERSONNEL OF COMMISSION	209
SUMMARY OF WORK OF COMMISSION	210
1963 LEGISLATIVE PROGRAM OF COMMISSION	211
Topics Selected for Study	211
Other Measures	211
CALENDAR OF TOPICS SELECTED FOR STUDY	214
Studies in Progress	214
Studies Which the Legislature Has Directed the Commission to Make	214
Studies Authorized by the Legislature Upon the Recommenda- tion of the Commission	215
Studies for Future Consideration	216
REPORT ON STATUTES REPEALED BY IMPLICATION OR HELD UNCON- STITUTIONAL	217
RECOMMENDATIONS	218
 APPENDICES	
I. Principal Amendments of Bills Introduced Upon Recom- mendation of Law Revision Commission	219
II. Special Report by Senate Committee on Judiciary on Senate Bill No. 42	225
III. Special Report by Assembly Committee on Ways and Means on Senate Bill No. 42	237
IV. Special Report by Senate Committee on Judiciary on Senate Bill No. 43	241



REPORT OF THE CALIFORNIA LAW REVISION COMMISSION FOR THE YEAR 1963

FUNCTION AND PROCEDURE OF COMMISSION

The California Law Revision Commission consists of one Member of the Senate, one Member of the Assembly, seven members appointed by the Governor with the advice and consent of the Senate, and the Legislative Counsel who is ex officio a nonvoting member.¹

The principal duties of the Law Revision Commission are to:

(1) Examine the common law and statutes of the State for the purpose of discovering defects and anachronisms therein.

(2) Receive and consider suggestions and proposed changes in the law from the American Law Institute, the National Conference of Commissioners on Uniform State Laws, bar associations and other learned bodies, judges, public officials, lawyers and the public generally.

(3) Recommend such changes in the law as it deems necessary to bring the law of this State into harmony with modern conditions.²

The Commission is required to file a report at each regular session of the Legislature containing a calendar of topics selected by it for study, listing both studies in progress and topics intended for future consideration. The Commission may study only topics which the Legislature, by concurrent resolution, authorizes it to study.³

Each of the Commission's recommendations is based on a research study of the subject matter concerned. Most of these studies are undertaken by specialists in the fields of law involved who are retained as research consultants to the Commission. This procedure not only provides the Commission with invaluable expert assistance but is economical as well because the attorneys and law professors who serve as research consultants have already acquired the considerable background necessary to understand the specific problems under consideration.

The consultant submits a detailed research study that is given careful consideration by the Commission. After making its preliminary decisions on the subject, the Commission distributes a tentative recommendation to the State Bar and to numerous other interested persons. Comments on the tentative recommendation are considered by the Commission in determining what report and recommendation it will make to the Legislature. When the Commission has reached a conclusion on the matter, its recommendation to the Legislature, including a draft of any legislation necessary to effectuate its recommendation, is published in a printed pamphlet.⁴ If the research study has not been previously published, it also is included in this pamphlet.

¹ See Cal. Stats. 1953, Ch. 1445, p. 3036; CAL. GOVT. CODE §§ 10300-10340. And see Cal. Stats. (1st Ex. Sess.) 1960, Ch. 61, p. 411, which revises Section 10308 of the Government Code.

² See CAL. GOVT. CODE § 10330. The Commission is also directed to recommend the express repeal of all statutes repealed by implication or held unconstitutional by the Supreme Court of the State or the Supreme Court of the United States. CAL. GOVT. CODE § 10331.

³ See CAL. GOVT. CODE § 10335.

⁴ Occasionally one or more members of the Commission may not join in all or part of a recommendation submitted to the Legislature by the Commission.

The pamphlets are distributed to the Governor, Members of the Legislature, heads of state departments and a substantial number of judges, district attorneys, lawyers, law professors and law libraries throughout the State.⁵ Thus, a large and representative number of interested persons are given an opportunity to study and comment upon the Commission's work before it is submitted to the Legislature. The annual reports and the recommendations and studies of the Commission are bound in a set of volumes that is both a permanent record of the Commission's work and, it is believed, a valuable contribution to the legal literature of the State.

A total of 57 bills and two proposed constitutional amendments, drafted by the Commission to effectuate its recommendations, have been presented to the Legislature. Thirty-nine of these bills became law—three in 1955,⁶ seven in 1957,⁷ thirteen in 1959,⁸ eight in 1961,⁹ and eight in 1963.¹⁰ One proposed constitutional amendment, favorably voted upon by the 1959 Legislature, was approved and ratified by the people in 1960.¹¹

⁵ See CAL. GOVT. CODE § 10333.

⁶ Cal. Stats. 1955, Ch. 799, p. 1400 and Ch. 877, p. 1494. (Revision of various sections of the Education Code relating to the Public School System.)

⁷ Cal. Stats. 1955, Ch. 1183, p. 2193. (Revision of Probate Code Sections 640 to 646—setting aside of estates.)

⁷ Cal. Stats. 1957, Ch. 102, p. 678. (Elimination of obsolete provisions in Penal Code Sections 1377 and 1378.)

Cal. Stats. 1957, Ch. 139, p. 733. (Maximum period of confinement in a county jail.)

Cal. Stats. 1957, Ch. 249, p. 902. (Judicial notice of the law of foreign countries.)

Cal. Stats. 1957, Ch. 456, p. 1308. (Recodification of Fish and Game Code.)

Cal. Stats. 1957, Ch. 490, p. 1520. (Rights of surviving spouse in property acquired by decedent while domiciled elsewhere.)

Cal. Stats. 1957, Ch. 540, p. 1589. (Notice of application for attorney's fees and costs in domestic relations actions.)

Cal. Stats. 1957, Ch. 1498, p. 2824. (Bringing new parties into civil actions.)

⁸ Cal. Stats. 1959, Ch. 122, p. 2005. (Doctrine of worthier title.)

⁸ Cal. Stats. 1959, Ch. 468, p. 2403. (Effective date of an order ruling on motion for new trial.)

Cal. Stats. 1959, Ch. 469, p. 2404. (Time within which motion for new trial may be made.)

Cal. Stats. 1959, Ch. 470, p. 2405. (Suspension of absolute power of alienation.)

Cal. Stats. 1959, Ch. 500, p. 2441. (Procedure for appointing guardians.)

Cal. Stats. 1959, Ch. 501, p. 2443. (Codification of laws relating to grand juries.)

Cal. Stats. 1959, Ch. 528, p. 2496. (Mortgages to secure future advances.)

Cal. Stats. 1959, Ch. 1715, p. 4115 and Chs. 1724-1728, pp. 4133-4156. (Presentation of claims against public entities.)

⁹ Cal. Stats. 1961, Ch. 461, p. 1540. (Arbitration.)

Cal. Stats. 1961, Ch. 589, p. 1733. (Rescission of contracts.)

Cal. Stats. 1961, Ch. 636, p. 1838. (Inter vivos marital property rights in property acquired while domiciled elsewhere.)

Cal. Stats. 1961, Ch. 657, p. 1867. (Survival of actions.)

Cal. Stats. 1961, Ch. 1612, p. 3439. (Tax apportionment in eminent domain proceedings.)

Cal. Stats. 1961, Ch. 1613, p. 3442. (Taking possession and passage of title in eminent domain proceedings.)

Cal. Stats. 1961, Ch. 1616, p. 3459. (Revision of Juvenile Court Law adopting the substance of two bills drafted by the Commission to effectuate its recommendations on this subject.)

¹⁰ Cal. Stats. 1963, Ch. 1681. (Sovereign immunity—tort liability of public entities and public employees.)

Cal. Stats. 1963, Ch. 1715. (Sovereign immunity—claims, actions and judgments against public entities and public employees.)

Cal. Stats. 1963, Ch. 1682. (Sovereign immunity—insurance coverage for public entities and public employees.)

Cal. Stats. 1963, Ch. 1683. (Sovereign immunity—defense of public employees.)

Cal. Stats. 1963, Ch. 1684. (Sovereign immunity—workmen's compensation benefits for persons assisting law enforcement or fire control officers.)

Cal. Stats. 1963, Ch. 1685. (Sovereign immunity—amendments and repeals of inconsistent special statutes.)

Cal. Stats. 1963, Ch. 1686. (Sovereign immunity—amendments and repeals of inconsistent special statutes.)

Cal. Stats. 1963, Ch. 2029. (Sovereign immunity—amendments and repeals of inconsistent special statutes.)

¹¹ CAL. CONST., Art. XI, § 10 (1960). (Power of Legislature to prescribe procedures governing claims against chartered cities and counties and employees thereof.)

PERSONNEL OF COMMISSION

Honorable Pearce Young of Napa, Member of the Assembly for the Fifth Assembly District, was appointed the Assembly Member of the Commission to fill the vacancy created when Honorable Clark L. Bradley of San Jose, former Assembly Member of the Commission, assumed his duties as a Member of the Senate for the Eighteenth Senatorial District.

As of December 31, 1963, the membership of the Law Revision Commission is:

	<i>Term expires</i>
Herman F. Selvin, Los Angeles, <i>Chairman</i>	October 1, 1967
John R. McDonough, Jr., Stanford, <i>Vice Chairman</i>	October 1, 1967
Hon. James A. Cobey, Merced, <i>Senate Member</i>	*
Hon. Pearce Young, Napa, <i>Assembly Member</i>	*
Joseph A. Ball, Long Beach, <i>Member</i>	October 1, 1965
James R. Edwards, San Bernardino, <i>Member</i>	October 1, 1967
Richard H. Keatinge, Los Angeles, <i>Member</i>	October 1, 1967
Sho Sato, Berkeley, <i>Member</i>	October 1, 1965
Thomas E. Stanton, Jr., San Francisco, <i>Member</i>	October 1, 1965
Angus C. Morrison, Sacramento, <i>ex officio Member</i>	**

* The legislative members of the Commission serve at the pleasure of the appointing power.

** The Legislative Counsel is *ex officio* a nonvoting member of the Commission.

In December 1963, the Commission elected new officers. Professor John R. McDonough, Jr., was elected Chairman. Mr. Richard H. Keatinge was elected Vice Chairman. Their terms commence on January 1, 1964.

On July 1, 1963, the position of Executive Secretary of the Commission became a full time position. Previously, the Executive Secretary devoted 80 percent of his time to Commission work and 20 percent of his time to service as a member of the law faculty of Stanford University. This change reflects the expansion of the Commission's program over the past several years and the realization, which this development has brought, that the Executive Secretary is required to devote his full time to Commission activities.

SUMMARY OF WORK OF COMMISSION

During 1963, the Law Revision Commission was engaged in three principal tasks:

- (1) Presentation of its 1963 legislative program to the Legislature.¹
- (2) Work on various assignments given to the Commission by the Legislature.² Although the Commission considered several other topics on its current agenda of studies, the Commission has devoted substantially all of its time during 1963 to the study of two topics: (a) sovereign or governmental immunity, and (b) the Uniform Rules of Evidence.
- (3) A study, made pursuant to Section 10331 of the Government Code, to determine whether any statutes of the State have been held by the Supreme Court of the United States or by the Supreme Court of California to be unconstitutional or to have been impliedly repealed.³

The Commission held five two-day meetings and five three-day meetings in 1963.

¹ See pp. 211-213 of this report *infra*.

² See pp. 214-216 of this report *infra*.

³ See p. 217 of this report *infra*.

1963 LEGISLATIVE PROGRAM OF THE COMMISSION

TOPICS SELECTED FOR STUDY

Senate Concurrent Resolution No. 21 was introduced by Honorable James A. Cobey, the Senate Member of the Law Revision Commission. This resolution requested legislative authorization for the Commission to continue its study of topics previously approved by the Legislature.¹ The resolution was adopted by the Legislature, becoming Resolution Chapter 139 of the Statutes of 1963.

OTHER MEASURES

Tort Liability of Public Entities and Public Employees

Senate Bill No. 42, which in amended form became Chapter 1681 of the Statutes of 1963, was introduced by Senator Cobey to effectuate the recommendation of the Commission on this subject.² The bill was substantially amended. Many of the amendments were technical or clarifying amendments. The principal amendments of a substantive nature are listed in Appendix I, pages 219-222 *infra*.

Comments to various sections of the bill to reflect the principal amendments of a substantive nature are contained in special reports prepared by the Senate Committee on Judiciary and the Assembly Committee on Ways and Means. These reports were printed in the respective Journals³ and also are set out as Appendix II (Senate Report), beginning on page 225 *infra*, and Appendix III (Assembly Report), beginning on page 237 *infra*.

It should be noted that the special reports of the legislative committees state that, unless such reports contain new or revised comments, the comments contained under the various sections of Senate Bill No. 42 as set out in the Commission's printed recommendation reflect the intent of the legislative committees in approving the various provisions of Senate Bill No. 42.

Claims, Actions and Judgments Against Public Entities and Public Employees

Senate Bill No. 43, which in amended form became Chapter 1715 of the Statutes of 1963, was introduced by Senator Cobey to effectuate the recommendation of the Commission on this subject.⁴ A number of amendments were made. Most of them were of a technical or clarifying nature. The principal amendments are listed in Appendix I, pages 222-223 *infra*.

¹ Section 10335 of the Government Code provides that the Commission shall confine its studies to those topics set forth in the calendar of topics contained in the last preceding report which are thereafter approved for its study by concurrent resolution of the Legislature. The section also requires that the Commission study any topic which the Legislature, by concurrent resolution, refers to it for such study. Cal. Stats. 1963, Ch. 1797, creates a joint legislative committee to study the Penal Code and related laws and authorizes the committee to request the Commission to undertake the study of specific portions of the Penal Code and related laws.

² See 4 CAL. LAW REVISION COMM'N, REP., REC. & STUDIES 801 (1963).

³ See REPORT OF SENATE COMMITTEE ON JUDICIARY ON SENATE BILL NO. 42 (printed in Senate Journal for April 24, 1963); REPORT OF THE ASSEMBLY COMMITTEE ON WAYS AND MEANS ON SENATE BILL NO. 42 (printed in Assembly Journal for June 15, 1963).

⁴ See 4 CAL. LAW REVISION COMM'N, REP., REC. & STUDIES 1001 (1963).

Also set out as Appendix IV, beginning on page 241 *infra*, is a special report prepared by the Senate Committee on Judiciary at the 1963 First Extraordinary Session that relates to the effect of this legislation on previously accrued claims and actions.

Insurance Coverage for Public Entities and Public Employees

Senate Bill No. 44, which in amended form became Chapter 1682 of the Statutes of 1963, was introduced by Senator Cobey to effectuate the recommendation of the Commission on this subject.⁵ A number of technical and clarifying amendments were made. The principal amendments are listed in Appendix I, page 223 *infra*.

Defense of Public Employees

Senate Bill No. 45, which in amended form became Chapter 1683 of the Statutes of 1963, was introduced by Senator Cobey to effectuate the recommendation of the Commission on this subject.⁶ A number of technical and clarifying amendments were made. The principal amendments are listed in Appendix I, page 224 *infra*.

Liability of Public Entities for Ownership and Operation of Motor Vehicles

Senate Bill No. 46 was introduced by Senator Cobey to effectuate the recommendation of the Commission on this subject.⁷ The bill was not enacted as law. It passed the Senate in amended form; it was amended and passed by the Assembly but was not repassed by the Senate.

In the form in which it passed the Assembly, Senate Bill No. 46 would have limited public motor vehicle ownership liability to liability for vehicles owned, used, or maintained for a "proprietary" purpose. Other legislation enacted at the 1963 legislative session upon recommendation of the Commission eliminated the so-called "governmental-proprietary" distinction. The Commission withdrew its recommendation that the bill be enacted in the form in which it passed the Assembly because the Commission concluded that it would be undesirable to retain the "governmental-proprietary" distinction in one small area of potential liability—vehicle ownership liability—and determined that it was preferable to leave the matter of whether public entities will be subject to motor vehicle ownership liability to the courts for decision.

Workmen's Compensation Benefits for Persons Assisting Law Enforcement or Fire Control Officers

Senate Bill No. 47, which in amended form became Chapter 1684 of the Statutes of 1963, was introduced by Senator Cobey to effectuate the recommendation of the Commission on this subject.⁸ A number of technical or clarifying amendments were made. The principal amendments of a substantive nature are listed in Appendix I, page 224 *infra*.

⁵ See 4 CAL. LAW REVISION COMM'N, REP., REC. & STUDIES 1201 (1963).

⁶ See 4 CAL. LAW REVISION COMM'N, REP., REC. & STUDIES 1301 (1963).

⁷ See 4 CAL. LAW REVISION COMM'N, REP., REC. & STUDIES 1401 (1963).

⁸ See 4 CAL. LAW REVISION COMM'N, REP., REC. & STUDIES 1501 (1963).

Amendments and Repeals of Inconsistent Special Statutes

Senate Bills Nos. 483, 484 and 499 were introduced by Senator Cobey to effectuate the recommendation of the Commission on this subject.⁹

Senate Bill No. 483 was amended to correct a typographical error and in its amended form became Chapter 1685 of the Statutes of 1963.

Senate Bill No. 484 was amended (a) to restore certain language in the existing law relating to contracts and agreements that the Commission had proposed to delete and (b) to make the various sections in the bill consistent with each other. As thus amended, the bill became Chapter 1686 of the Statutes of 1963.

Senate Bill No. 499 was amended to correct several typographical errors and a technical amendment also was made. As thus amended, the bill became Chapter 2029 of the Statutes of 1963.

Condemnation Law and Procedure

Senate Bill No. 71 was introduced by Senator Cobey to effectuate the recommendation of the Commission relating to discovery in eminent domain proceedings.¹⁰ The bill passed the Senate in amended form but died in the Assembly Judiciary Committee.

⁹ See 4 CAL. LAW REVISION COMM'N, REP., REC. & STUDIES 1601 (1963).

¹⁰ See 4 CAL. LAW REVISION COMM'N, REP., REC. & STUDIES 701 (1963).

CALENDAR OF TOPICS SELECTED FOR STUDY

STUDIES IN PROGRESS

During the year covered by this report, the Commission had on its agenda the topics listed below, each of which it had been authorized and directed by the Legislature to study. The Commission proposes to continue its study of these topics.

*Studies Which the Legislature Has Directed the Commission To Make*¹

1. Whether the law of evidence should be revised to conform to the Uniform Rules of Evidence drafted by the National Conference of Commissioners on Uniform State Laws and approved by it at its 1953 annual conference.
2. Whether the law respecting habeas corpus proceedings, in the trial and appellate courts, should, for the purpose of simplification of procedure to the end of more expeditious and final determination of the legal questions presented, be revised.
3. Whether an award of damages made to a married person in a personal injury action should be the separate property of such married person.
4. Whether a trial court should have the power to require, as a condition of denying a motion for a new trial, that the party opposing the motion stipulate to the entry of judgment for damages in excess of the damages awarded by the jury.
5. Whether the laws relating to bail should be revised.
6. Whether the law and procedure relating to condemnation should be revised in order to safeguard the property rights of private citizens.²
7. Whether the doctrine of sovereign or governmental immunity in California should be abolished or revised.³

¹ Section 10335 of the Government Code provides that the Commission shall study, in addition to those topics which it recommends and which are approved by the Legislature, any topic which the Legislature by concurrent resolution refers to it for such study.

The legislative directives to make these studies are found in the following:

- Nos. 1 and 2: Cal. Stats. 1956, Res. Ch. 42, p. 263.
- Nos. 3 and 4: Cal. Stats. 1957, Res. Ch. 202, p. 4589.
- No. 5: Cal. Stats. 1957, Res. Ch. 287, p. 4744.
- No. 6: Cal. Stats. 1956, Res. Ch. 42, p. 263.
- No. 7: Cal. Stats. 1957, Res. Ch. 202, p. 4589.

² See *Recommendation and Study Relating to Evidence in Eminent Domain Proceedings; Recommendation and Study Relating to Taking Possession and Passage of Title in Eminent Domain Proceedings; Recommendation and Study Relating to the Reimbursement for Moving Expenses When Property Is Acquired for Public Use*, 3 CAL. LAW REVISION COMM'N, REP., REC. & STUDIES, Recommendations and Studies at A-1, B-1, and C-1 (1961). For a legislative history of these recommendations, see 3 CAL. LAW REVISION COMM'N, REP., REC. & STUDIES 1-5 (1961). See also *Recommendation and Study Relating to Condemnation Law and Procedure: Number 4—Discovery in Eminent Domain Proceedings*, 4 CAL. LAW REVISION COMM'N, REP., REC. & STUDIES 701 (1963). For a legislative history of this recommendation, see 4 CAL. LAW REVISION COMM'N, REP., REC. & STUDIES 213 (1963).

³ See *Recommendations Relating to Sovereign Immunity: Number 1—Tort Liability of Public Entities and Public Employees; Number 2—Claims, Actions and Judgments Against Public Entities and Public Employees; Number 3—Insurance Coverage for Public Entities and Public Employees; Number 4—Defense of Public Employees; Number 5—Liability of Public Entities for Ownership and Operation of Motor Vehicles; Number 6—Workmen's Compensation Benefits for Persons Assisting Law Enforcement or Fire Control Officers; Number 7—Amendments and Repeals of Inconsistent Special Statutes*, 4 CAL. LAW REVISION COMM'N, REP., REC. & STUDIES 801, 1001, 1201, 1301, 1401, 1501, and 1601 (1963). For a legislative history of these recommendations, see 4 CAL. LAW REVISION COMM'N, REP., REC. & STUDIES 211-213 (1963). See also *A Study Relating to Sovereign Immunity*, 5 CAL. LAW REVISION COMM'N, REP., REC. & STUDIES 1 (1963).

*Studies Authorized by the Legislature Upon the Recommendation of the Commission*¹

1. Whether the jury should be authorized to take a written copy of the court's instructions into the jury room in civil as well as criminal cases.²
2. Whether the law relating to escheat of personal property should be revised.³
3. Whether the law relating to the rights of a putative spouse should be revised.⁴
4. Whether the law respecting post conviction sanity hearings should be revised.⁵
5. Whether the law respecting jurisdiction of courts in proceedings affecting the custody of children should be revised.⁶
6. Whether the law relating to attachment, garnishment and property exempt from execution should be revised.⁷
7. Whether the Small Claims Court Law should be revised.⁸
8. Whether the law relating to the rights of a good faith improver of property belonging to another should be revised.⁹
9. Whether the separate trial on the issue of insanity in criminal cases should be abolished or whether, if it is retained, evidence of the defendant's mental condition should be admissible on the issue of specific intent in the trial on the other pleas.¹⁰
10. Whether partnerships and unincorporated associations should be permitted to sue in their common names and whether the law relating to the use of fictitious names should be revised.¹¹
11. Whether the law relating to the doctrine of mutuality of remedy in suits for specific performance should be revised.¹²
12. Whether the provisions of the Penal Code relating to arson should be revised.¹³
13. Whether Civil Code Section 1698 should be repealed or revised.¹⁴
14. Whether Section 7031 of the Business and Professions Code, which precludes an unlicensed contractor from bringing an action to recover for work done, should be revised.¹⁵

¹ Section 10335 of the Government Code requires the Commission to file a report at each regular session of the Legislature containing, *inter alia*, a list of topics intended for future consideration, and authorizes the Commission to study the topics listed in the report which are thereafter approved for its study by concurrent resolution of the Legislature.

The legislative authority for the studies in this list is:

No. 1: Cal. Stats. 1955, Res. Ch. 207, p. 4207.

Nos. 2 through 7: Cal. Stats. 1956, Res. Ch. 42, p. 263.

Nos. 8 through 16: Cal. Stats. 1957, Res. Ch. 202, p. 4589.

Nos. 17 through 19: Cal. Stats. 1958, Res. Ch. 61, p. 135.

No. 20: Cal. Stats. 1959, Res. Ch. 218, p. 5792; Cal. Stats. 1956, Res. Ch. 42, p. 263.

No. 21: Cal. Stats. 1962, Res. Ch. 23, p. 94.

² For a description of this topic, see 1 CAL. LAW REVISION COMM'N, REP., REC. & STUDIES, 1955 Report at 28 (1957). For the legislative history, see 2 CAL. LAW REVISION COMM'N, REP., REC. & STUDIES, 1958 Report at 13 (1959).

³ See 1 CAL. LAW REVISION COMM'N, REP., REC. & STUDIES, 1956 Report at 25 (1957).

⁴ *Id.* at 28.

⁵ *Id.* at 28.

⁶ *Id.* at 29.

⁷ See 1 CAL. LAW REVISION COMM'N, REP., REC. & STUDIES, 1957 Report at 15 (1957).

⁸ *Id.* at 16.

⁹ *Id.* at 17.

¹⁰ *Id.* at 18.

¹¹ *Ibid.*

¹² *Id.* at 19.

¹³ *Id.* at 20.

¹⁴ *Id.* at 21.

¹⁵ *Id.* at 23.

15. Whether the law respecting the rights of a lessor of property when it is abandoned by the lessee should be revised.¹⁶
16. Whether a former wife, divorced in an action in which the court did not have personal jurisdiction over both parties, should be permitted to maintain an action for support.¹⁷
17. Whether California statutes relating to service of process by publication should be revised in light of recent decisions of the United States Supreme Court.¹⁸
18. Whether Section 1974 of the Code of Civil Procedure should be repealed or revised.¹⁹
19. Whether the doctrine of election of remedies should be abolished in cases where relief is sought against different defendants.²⁰
20. Whether the various sections of the Code of Civil Procedure relating to partition should be revised and whether the provisions of the Code of Civil Procedure relating to the confirmation of partition sales and the provisions of the Probate Code relating to the confirmation of sales of real property of estates of deceased persons should be made uniform and, if not, whether there is need for clarification as to which of them governs confirmation of private judicial partition sales.²¹
21. Whether Vehicle Code Section 17150 should be revised or repealed insofar as it imputes the contributory negligence of the driver of a vehicle to its owner.²²

STUDIES FOR FUTURE CONSIDERATION

Pursuant to Section 10335 of the Government Code, the Commission has reported 58 topics that it had selected for study to the Legislature since 1955. Forty-eight of these topics were approved.¹ The Legislature also has referred 11 other topics to the Commission for study.

A total of 57 bills and two proposed constitutional amendments, drafted by the Commission to effectuate its recommendations, have been presented to the Legislature. The Commission also has submitted four reports on topics which, after study, it concluded either that the existing law did not need to be revised or that the topic was one not suitable for study by the Commission.

The Commission now has an agenda consisting of 28 studies in progress,² some of substantial magnitude, that will require all of its energies during the current fiscal year and during the fiscal year 1964-65. For this reason the Commission will not request authority at the 1964 legislative session to undertake additional studies.

¹⁶ *Id.* at 24.

¹⁷ *Id.* at 25.

¹⁸ See 2 CAL. LAW REVISION COMM'N, REP., REC. & STUDIES, 1958 Report at 18 (1959).

¹⁹ *Id.* at 20.

²⁰ *Id.* at 21.

²¹ See 1 CAL. LAW REVISION COMM'N, REP., REC. & STUDIES, 1956 Report at 21 (1957).

²² See 4 CAL. LAW REVISION COMM'N, REP., REC. & STUDIES 20 (1963).

¹ Although 49 topics actually have been approved by the Legislature at the request of the Commission, one of these topics was consolidated with a topic which the Legislature later directed the Commission to study. See 1 CAL. LAW REVISION COMM'N, REP., REC. & STUDIES, 1957 Report at 12, n. 31 (1957).

² For a complete list of these studies, see pp. 214-216 *supra*.

REPORT ON STATUTES REPEALED BY IMPLICATION OR HELD UNCONSTITUTIONAL

Section 10331 of the Government Code provides:

The commission shall recommend the express repeal of all statutes repealed by implication, or held unconstitutional by the Supreme Court of the State or the Supreme Court of the United States.

Pursuant to this directive the Commission has made a study of the decisions of the Supreme Court of the United States and of the Supreme Court of California handed down since the Commission's last Annual Report was prepared.¹ It has the following to report:

(1) No decision of the Supreme Court of the United States holding a statute of this State repealed by implication has been found.

(2) One decision of the Supreme Court of the United States holding statutes of this State unconstitutional has been found.

In *Paul v. United States*,² the United States Supreme Court held unconstitutional the provisions of Chapter 17 of Division 6 of the Agricultural Code, relating to the establishment (Article 10, commencing with Section 4350) and enforcement (Article 14, consisting of Section 4410, and Article 15, commencing with Section 4415) by the State Director of Agriculture of minimum wholesale and retail prices for fluid milk and fluid cream, insofar as these provisions apply to the wholesale price of milk sold to the United States at military enclaves within California.

(3) No decision of the Supreme Court of California holding a statute of this State repealed by implication has been found.

(4) Three decisions of the Supreme Court of California holding statutes of this State unconstitutional have been found.

In *People v. Stevenson*,³ former Section 496 of the Penal Code⁴ was held unconstitutional insofar as it provided for a presumption of guilty knowledge on the part of one who received stolen property from a minor under the age of 18.

In *Department of Mental Hygiene v. Hawley*,⁵ Section 6650 of the Welfare and Institutions Code was held unconstitutional to the extent that it imposes upon designated relatives of mentally ill persons or inebriates liability for the care, support, and maintenance of such persons committed pursuant to either Section 1026 or Section 1368 *et seq.* of the Penal Code.

In *Citizens Utilities Co. v. Superior Court*,⁶ Code of Civil Procedure Section 1249, relating to the date of valuation in eminent domain proceedings, was held unconstitutional insofar as its application to a public utility would deny just compensation for certain involuntary and compulsory improvements, betterments, and additions made after the date of valuation provided for in Section 1249.

¹ This study has been carried through 60 Adv. Cal. 552 (1963) and 374 U.S. 900 (1963).
² 371 U.S. 245 (1963).

³ 58 Cal.2d 794, 26 Cal. Rptr. 297, 376 P.2d 297 (1962).

⁴ Section 496 of the Penal Code was amended in 1963, apparently to remove the constitutional objections raised in this decision. Cal. Stats. 1963, Ch. 1605.

⁵ 59 Cal.2d 247, 28 Cal. Rptr. 713, 379 P.2d 22 (1963).

⁶ 59 Cal.2d 805, 31 Cal. Rptr. 316, 382 P.2d 356 (1963).

RECOMMENDATIONS

The Law Revision Commission respectfully recommends that the Legislature authorize the Commission to complete its study of the topics listed on pages 214-216 of this report.

Pursuant to the mandate imposed by Section 10331 of the Government Code, the Commission recommends the repeal of Section 6650 of the Welfare and Institutions Code to the extent that Section 6650 has been held unconstitutional.

APPENDIX I

PRINCIPAL AMENDMENTS OF BILLS INTRODUCED UPON RECOMMENDATION OF LAW REVISION COMMISSION

Only bills that were enacted as law are included in the following listing. For amendments to Senate Bills 483, 484, and 499 (which were enacted as law), see the discussion of those bills on page 213 *supra*. For a legislative history of all the bills introduced upon recommendation of the Law Revision Commission at the 1963 Regular Session, see pages 211-213 *supra*.

Senate Bill No. 42

The following are the principal amendments of Senate Bill No. 42 that are of a substantive nature:

Section 810.2 was amended to change "officer, agent or employee" to "officer, employee or servant, whether or not compensated."

Section 814.2 was added to make clear that the new statute will not impliedly repeal any provision of the Workmen's Compensation Act.

Section 815 was amended to substitute "statute" for "enactment" so that (a) liability of public entities will exist only if it is imposed by statute and (b) the immunity provisions will prevail over the liability provisions except as otherwise provided by statute.

Section 815.2(b) was amended to substitute "statute" for "enactment" so that liability of public entities will exist only if it is imposed by statute.

Proposed Section 815.8 was deleted. This section would have made a public entity liable for an injury caused by an employee if the injury was proximately caused by the failure of the appointing power of the public entity to exercise due care in selecting or appointing the employee or by the failure to exercise due care to eliminate the risk of such injury after the appointing power had knowledge or notice that the conduct, or the continued retention, of the employee in the position to which he was assigned created an unreasonable risk of such injury.

Proposed Section 816 was deleted. This section would have made a public entity liable for injury proximately caused by an employee of the public entity if the employee, acting within the scope of his employment, instituted or prosecuted a judicial or administrative proceeding without probable cause and with actual malice.

Section 818.2 was amended to substitute "law" for "enactment."

Section 818.8 was added to provide that a public entity is not liable for misrepresentation by an employee of the public entity. This addition did not affect liability based on contract nor the right to obtain relief other than money or damages. See Section 814.

Section 820.2 was amended to substitute "statute" for "enactment" so that liability for discretionary acts or omissions of public employees may be imposed only by statute.

Section 820.4 was amended to substitute "execution or enforcement of any law" for "execution of any enactment."

Section 820.6 was amended to delete the phrase "exercising due care."

Section 820.8 was amended to substitute "statute" for "enactment" so that liability of a public employee for the act of another person may be imposed only by statute. The amendment did not affect the liability of the employee for his own negligence in selecting or failing to discharge another employee.

Section 822 was added to provide that a public employee is not liable for money stolen from his official custody unless the loss was sustained as a result of his own negligent or wrongful act or omission.

Section 822.2 was added to provide that a public employee is not liable for misrepresentation unless he is guilty of actual fraud, corruption or actual malice.

Section 825, relating to indemnification of public employees, was amended to allow a public entity to conduct the defense of a public employee or former employee against any claim or action under an agreement reserving the rights of the public entity not to pay the judgment, compromise or settlement unless it is established that the cause of action arose out of an act or omission occurring within the scope of his employment. As originally proposed by the Commission, this section would have required the public entity to determine whether or not the public employee or former employee against whom action is brought was acting within the scope of his employment prior to accepting the task of defending him; a public entity, then, would have been required to pay any judgment, or any compromise or settlement to which the public entity had agreed, against an employee or former employee for whom the public entity provided defense.

Section 825 was also amended to provide that a public employee or former employee who requests a public entity to defend an action or claim against him must make his request in writing not less than 10 days before the day of the trial.

Section 830.5 was added to provide (a) that, except where the doctrine of *res ipsa loquitur* is applicable, the happening of an accident which results in injury is not in and of itself evidence that public property was in a dangerous condition and (b) that the fact that action was taken after an injury occurred to protect against a condition of public property is not evidence that the public property was in a dangerous condition at the time of the injury.

Section 831.2 was amended to apply to natural conditions of all types of unimproved property and to make the immunity unconditional.

Section 831.4 was amended to make the immunity unconditional and to make the definition of recreational access roads more precise.

Section 831.8 was added to grant immunity to public entities and public employees for an injury caused by the condition of a reservoir, canal, conduit or drain if at the time of the injury the person injured was using the property for any purpose other than that for which the public entity intended or permitted the property to be used. Subject to specified conditions, the immunity does not apply if the condition is a trap or an attractive nuisance.

Section 835 was amended to delete the requirement that the plaintiff establish that the public entity or public employee did not take adequate measures to protect against the risk of the dangerous condition.

Section 835.2 was amended to make evidence of what constitutes a reasonable inspection system and evidence of whether the entity maintained and operated such an inspection system admissible on the issue of whether the entity should have discovered a dangerous condition and its dangerous character.

Section 840.2 was amended to delete the requirement that the plaintiff establish that the public employee did not take adequate measures to protect against the risk of the dangerous condition.

Section 840.4 was amended to conform to the amendment made to *Section 835.2*.

Section 844 was added to define "prisoner."

Section 844.6 was added. Subject to several exceptions, this section provides immunity to a public entity for (a) an injury proximately caused by a prisoner or (b) an injury to a prisoner. The section does not affect the liability of public employees, but the public entity need not pay judgments, compromises or settlements of claims against employees unless based on malpractice by a person licensed in one of the healing arts.

Section 845.4 was amended (a) to impose liability on a public entity where an employee acting in the scope of his employment is liable for intentional and unjustifiable interference with the right of a prisoner to obtain a judicial determination or review of the legality of his confinement, and (b) to permit an action for an injury covered by that section to be commenced only after it has first been determined that the confinement was illegal.

Section 845.6 was amended to impose liability on a public entity where an employee acting within the scope of his employment knows or has reason to know that the prisoner is in need of immediate medical care and fails to take reasonable action to summon such medical care.

Section 845.8 was amended to provide immunity from liability for determining whether to revoke a parole or release of a prisoner.

Section 846 was amended to provide immunity for injury caused by failure to retain an arrested person in custody.

Section 854 was added to define "medical facility."

Section 854.2 was added to define "mental institution."

Section 854.4 was added to define "mental illness or addiction."

Section 854.8 was added. Subject to several exceptions, this section provides immunity to a public entity for (a) an injury proximately caused by a person committed or admitted to a mental institution or (b) an injury to a person committed or admitted to a mental institution. The section does not affect the liability of public employees, but the public entity need not pay judgments, compromises or settlements of claims against employees unless based on malpractice by a person licensed in one of the healing arts.

Section 855.2 was amended (a) to impose liability on a public entity where an employee acting in the scope of his employment is liable for intentional and unjustifiable interference with the right of a mental patient to obtain a judicial determination or review of the legality of his confinement, and (b) to permit an action for an injury covered by

that section to be commenced only after it has first been determined that the confinement was illegal.

Section 855.8 was amended (a) to make the immunities provided by that section applicable to public entities, (b) to eliminate immunity where a public employee undertakes to prescribe and (c) to broaden the scope of the immunity to cover all persons afflicted with mental illness or addiction.

Section 856 was amended to make the immunities provided by that section applicable to public entities.

Section 856.2 was added to provide immunity for injury caused by an escaping or escaped person who has been committed for mental illness or addiction.

Section 856.4 was added to provide immunity for failure to admit a person to a public medical facility unless there was a mandatory duty to admit such person. (This section was originally added as *Section 856.2* but was renumbered as *Section 856.4* by a later Senate amendment.)

Chapter 6 (Sections 860, 860.2 and 860.4) was added to provide immunity for injury caused by (a) instituting any judicial or administrative proceeding or action for or incidental to the assessment or collection of a tax or (b) an act or omission in the interpretation or application of any law relating to a tax.

Section 895 was amended to make clear that the definition of "agreement" does not include "an agreement between public entities which is designed to implement the disbursement or subvention of public funds from one of the public entities to the other, whether or not it provides standards or controls governing the expenditure of such funds."

Section 895.8 was amended so that *Section 895.6* (relating to contribution) would not apply to existing agreements.

Senate Bill No. 43

The following are the principal amendments of Senate Bill No. 43:

Section 905.2 was amended to substitute "statute or constitutional provision" for "enactment" in two places in the section.

Section 910, which lists the information required to be shown on claims against public entities, was amended to require two additional items of information: (a) the name or names of the public employee or employees causing the injury, damage, or loss, if known, and (b) an estimate of the amount of prospective injury, damage, or loss, insofar as it may be known at the time of the presentation of the claim. The latter is to be included in the amount claimed.

Section 910.8 was amended to make clear that claims against public entities may be considered and acted upon by persons designated by the governing body of a local public entity or by the State Board of Control as well as by the governing body or the Board of Control itself.

Sections 911.6 and 912, relating to conditions under which permission to file a late claim against a public entity shall be granted by the board of the public entity or by a superior court, were amended to permit a

public entity or a superior court to refuse such permission if the public entity would be "prejudiced"; under the bill as introduced, the public entity would have had to be "unduly prejudiced."

Section 912.6, listing the alternative ways in which a public entity may dispose of a claim against it, was amended to provide that the board of a local public entity "may" (rather than "shall") act on a claim against it in one of the alternate ways listed in the section.

Section 935.4 was amended (a) to provide that, by charter provision, a public employee may be authorized to allow, compromise or settle claims in excess of \$5000, and (b) to authorize delegation of functions to a "commission" of the public entity as well as to an employee of the public entity.

Section 945.6 was amended to provide that a prisoner whose civil right to commence an action has been suspended may bring an action within the prescribed time after his civil right to do so has been restored.

Section 950.4 was amended to delete the requirement that the plaintiff notify the public entity within a reasonable time after he acquired the knowledge that the public entity or its employee caused the injury.

Section 950.6 was amended to provide that a prisoner whose civil right to commence an action has been suspended may bring an action within the prescribed time after his civil right to do so has been restored.

Proposed Sections 152 and 153 were replaced by a new *Section 152* which provides that the bill applies to all causes of action heretofore or hereafter accruing and contains provisions to deal with some of the problems created by making the bill applicable to existing causes of action. After the bill was signed by the Governor, the Senate Committee on Judiciary, at the 1963 First Extraordinary Session, made a special report relating to *Section 152* which was printed in the *Senate Journal*.¹ This report is set out as Appendix IV, beginning on page 241 *infra*.

Senate Bill No. 44

The following are the principal amendments of Senate Bill No. 44:²

Section 990.8 was amended to make clear that two or more local public entities having the same governing board may be coinsured under a master policy and the total premium prorated among such entities.

Government Code Section 11007.4(a)(1) was amended to conform to the definition of "employee" in Senate Bill No. 42.

Government Code Section 11290 was amended to conform to Senate Bills Nos. 42, 44 and 46.

Government Code Section 11010 was amended to conform to amended *Section 11290* as contained in Senate Bill No. 44.

Education Code Section 1017 was amended to conform to Senate Bills Nos. 42 and 44.

¹ See REPORT OF THE SENATE COMMITTEE ON JUDICIARY ON SENATE BILL NO. 43 (printed in the *Senate Journal* for July 31, 1963).

² Because Senate Bill No. 42 was enacted into law, *Section 1* of Senate Bill No. 44 never became effective. See Cal. Stats. 1963, Ch. 1682, § 13. Hence, the amendments to *Section 1* of Senate Bill No. 44 are not included in this discussion.

Senate Bill No. 45

The following are the principal amendments of Senate Bill No. 45:³

(1) *Proposed Section 996.2* was deleted as unnecessary. This section provided that a mention, during the *voir dire* examination of jurors or at any other time in the presence of the jury, of the statutory provisions relating to defense of public employees or of whether or not a public employee or former employee requested or was provided with defense by a public entity, constituted grounds for mistrial.

(2) Various sections of the bill were amended to substitute "officer, employee or servant" for "officer, agent or employee" in order to conform these sections to the definition of "employee" contained in Senate Bill No. 42.

Senate Bill No. 47

The following are the principal amendments of a substantive nature to Senate Bill No. 47:

Sections 3365 and 3366 were amended to exclude independent contractors and employees of independent contractors from benefits under the bill.

Section 3365 was amended (a) to exclude members of the Armed Forces of the United States while serving under military command in suppressing a fire from benefits under Section 4458, (b) to add a subdivision covering the right of persons who furnish aircraft for fire suppression purposes to receive benefits under Section 4458, and (c) to define when a person is engaged in suppressing a fire.

Section 4458 was amended to provide for the method of calculating the benefits which inmates of penal or correctional institutions would be entitled to receive under that section.

³ Because Senate Bill No. 42 was enacted into law, Section 1 of Senate Bill No. 45 never became effective. See Cal. Stats. 1963, Ch. 1683, § 21. Hence, the amendments to Section 1 of Senate Bill No. 45 are not included in this discussion.

APPENDIX II
SPECIAL REPORT BY SENATE COMMITTEE ON
JUDICIARY ON SENATE BILL No. 42 ¹

¹ Extract from Senate Journal for April 24, 1963 (1963 Regular Session).

MOTION TO PRINT REPORT RE SENATE BILL NO. 42

Senator Regan moved that the following letter of transmittal and the report of the Committee on Judiciary regarding Senate Bill No. 42 be printed in the Journal, and that 100 additional copies of this day's Journal be printed for the Committee on Judiciary.

Motion carried.

LETTER OF TRANSMITTAL

CALIFORNIA LEGISLATURE
SENATE COMMITTEE ON JUDICIARY

Hon. Glenn M. Anderson
President of the Senate

DEAR SIR: The Senate Committee on Judiciary, having considered Senate Bill No. 42 and having reported it "do pass as amended, but first amend, and re-refer to Committee on Finance" on April 2, 1963, herewith submits this report concerning Senate Bill No. 42. The committee believes that the comments contained in this report on various sections of the bill will prove helpful in determining legislative intent.

The report contains comments to reflect the actions taken on this bill by both the Committee on Judiciary and the Committee on Finance. After the bill was reported by the Committee on Judiciary, the Committee on Finance adopted amendments that added Sections 844.6 and 854.8 to the bill. But both of these sections were originally added to the bill by amendments adopted when the bill was before the Committee on Judiciary and were later deleted by amendments adopted by the Committee on Judiciary. Accordingly, since the Committee on Judiciary is familiar with the sections and their purpose, this report includes comments on these sections.

Respectfully submitted,

EDWIN J. REGAN, Chairman

FRANK S. PETERSEN, Vice Chairman

CLARK L. BRADLEY

RONALD G. CAMERON

CARL L. CHRISTENSEN, JR.

JAMES A. COBEY

RICHARD J. DOLWIG

FRED S. FARR

DONALD L. GRUNSKY

JOHN W. HOLMDAHL

ROBERT J. LAGOMARSINO

VIRGIL O'SULLIVAN

JOSEPH A. RATTIGAN

REPORT OF SENATE COMMITTEE ON JUDICIARY ON SENATE BILL NO. 42

In order to indicate more fully its intent with respect to Senate Bill No. 42, the Senate Committee on Judiciary makes the following report.

Except for the new or revised comments set out below, the comments contained under the various sections of Senate Bill No. 42 as set out in the *Recommendation of the California Law Revision Commission relating to Sovereign Immunity, Number 1—Tort Liability of Public Entities and Public Employees* (January, 1963) reflect the intent of the Senate Committee on Judiciary in approving the various provisions of Senate Bill No. 42.

The following new and revised comments to various sections of Senate Bill No. 42 also reflect the intent of the Senate Committee on Judiciary in approving Senate Bill No. 42.

Section 810.2

Comment: "Employee" was originally defined (in the bill as introduced) to include "an officer, agent or employee," but not an "independent contractor." By amendment, the word "servant" was substituted for "agent" because (1) "servant" was considered more appropriate than "agent" when used in a statute relating to tort liability and (2) the public entities feared that to impose liability upon public entities for the torts of "agents" would expand vicarious liability to include a large, indefinite class of persons and "servant" was believed to be more restrictive than "agent." The words "whether or not compensated" are taken from a somewhat similar definition of "employee" found in the Federal Tort Claims Act (28 U.S.C. §2671).

Independent contractors are excluded from the definition of "employee" so that the problems of liability, insurance, defense and claims arising out of acts and omissions of independent contractors may be met by different statutory provisions than those applicable to public employees.

Section 814

Comment: The various provisions of this part determine only whether a public entity or public employee is liable for money or damages. These provisions do not create any right to any other type of relief, nor do they have any effect on any other type of relief that may be available against a public entity or public employee.

The doctrine of sovereign immunity has not protected public entities in California from liability arising out of contract. This section makes clear that this statute has no effect on the contractual liabilities of public entities or public employees.

This section also declares that the provisions of this statute relating to liability of public entities and public employees have no effect upon whatever right a person may have to obtain relief other than money or damages. Thus, for example, even though Section 820.6 provides that public employees are not liable for enforcing unconstitutional statutes, and even though public entities have a similar immunity under Sections 815 and 815.2, the right to enjoin the enforcement of unconstitutional statutes will still remain. Under this statute as limited by this section, the appropriate way to seek review of discretionary governmental actions is by an action for specific or preventive relief to control the abuse of discretion, not by tort actions for damages.

Section 814.2

Comment: This section makes clear that the statute relating to the liability of public entities and public employees has no effect on rights under the Workmen's Compensation Act.

Section 815

Comment: This section abolishes all common law or judicially declared forms of liability for public entities, except for such liability as may be required by the state or federal constitution, *e.g.*, inverse condemnation. In the absence of a constitutional requirement, public entities may be held liable only if a statute (not including a charter provision, ordinance or regulation) is found declaring them to be liable. Because of the limitations contained in Section 814, which declares that this part does not affect liability arising out of contract or the right to obtain specific relief against public entities and employees, the practical effect of this section is to eliminate any common law governmental liability for damages arising out of torts. The use of the word "tort" has been avoided, however, to prevent the imposition of liability by the courts by reclassifying the act causing the injury.

As originally introduced, this section used "enactment" instead of "statute." The word "statute" was substituted because the terms and conditions of liability of public entities are matters of statewide concern

and should be subject to uniform rules established by the action of the Legislature.

In the following portions of this division, there are many sections providing for the liability of governmental entities under specified conditions. In other codes there are a few provisions providing for the liability of governmental entities, *e.g.*, Vehicle Code Section 17001 *et seq.* and Penal Code Section 4900. But there is no liability in the absence of a statute declaring such liability. For example, there is no section in this statute declaring that public entities are liable for nuisance, even though the California courts have previously held that public entities are subject to such liability even in the absence of statute. Under this statute, the right to recover damages for nuisance will have to be established under the provisions relating to dangerous conditions of public property or under some other statute that may be applicable to the situation. However, the right to specific or preventive relief in nuisance cases is not affected. Similarly, this statute eliminates the common law liability of public entities for injuries inflicted in proprietary activities.

In the following portions of this division, there also are many sections granting public entities and public employees broad **immunities from liability**. In general, the statutes imposing liability are cumulative in nature, *i.e.*, if liability cannot be established under the requirements of one section, liability will nevertheless exist if liability can be established under the provisions of another section. On the other hand, under subdivision (b) of this section, the immunity provisions will as a general rule prevail over all sections imposing liability. **Where the sections imposing liability or granting an immunity do not fall into this general pattern, the sections themselves make this clear.**

Subdivision (b) also makes it clear that the sections imposing liability are subject to the ordinary defenses, such as contributory negligence and assumption of the risk, that are available in tort litigation between private persons.

Section 815.2

Comment: This section imposes upon public entities vicarious liability for the tortious acts and omissions of their employees. It makes clear that in the absence of a statute a public entity cannot be held liable for an employee's act or omission where the employee himself would be immune. The California courts have held on many occasions that a public employee is immune from liability for his discretionary acts within the scope of his employment even though the discretion be abused. This rule is codified in Section 820.2. Under the above section, a public entity also is entitled to the protection of that immunity. Thus, this section nullifies the suggestion appearing in a dictum in *Lipman v. Brisbane Elementary School District*, 55 Cal.2d 224, 11 Cal. Rptr. 97, 359 P.2d 465 (1961), that public entities may be liable for the acts of their employees even when the employees are immune.

Under this section, it will not be necessary in every case to identify the particular employee upon whose act the liability of the public entity is to be predicated. All that will be necessary will be to show that

some employee of the public entity tortiously inflicted the injury in the scope of his employment under circumstances where he would be personally liable.

The exception appears in subdivision (b) because under certain circumstances it appears to be desirable to provide by statute that a public entity is liable even when the employee is immune. For example, Chapter 2 (commencing with Section 830) provides that a public entity may be liable for a dangerous condition of public property even though no employee is personally liable.

Subdivision (a) expresses a rule that has been applicable to all public entities in the State insofar as their "proprietary" activities are concerned. The section is similar to the English Crown Proceedings Act of 1947, the Canadian Crown Proceedings Act, and a Uniform Proceedings Against the Crown Act that has been adopted in several Canadian provinces.

Section 815.8

Comment: This section of the bill (as introduced), which made public entities directly liable for failure to exercise due care in appointing or in failing to remove or discipline employees, was deleted. The deletion of this section does not affect liability imposed by other provisions of the statute, such as Sections 815.2, 820 and 820.8.

Section 816

Comment: This section of the bill (as introduced), which imposed liability on public entities for malicious prosecution, was deleted. The deletion of this section resulted in a restoration of the pre-*Muskopf* law, and both public entities (Sections 815 and 815.2) and public employees (Section 821.6) are immune from liability for malicious prosecution.

Section 818.4

Comment: This section, like Section 818.2, would be unnecessary but for a possible implication that might arise from Section 815.6. It recognizes another immunity that has been recognized by the New York courts in the absence of statute. Under the Federal Tort Claims Act, the immunity would be within the general discretionary immunity. Direct review of this type of action by public entities is usually available through writ proceedings or other proceedings to review administrative action or inaction.

Under this section, for example, the State is immune from liability if the State Division of Industrial Safety issues or fails to issue a safety order and a city is immune if it issues or refuses to issue a building permit, even though negligence is involved in issuing or failing to issue the order or permit.

Section 818.6

Comment: Like Sections 818.2 and 818.4, this section would be unnecessary but for Section 815.6. It recognizes another immunity that has been recognized by the New York courts in the absence of statute. Because of the extensive nature of the inspection activities of public entities, a public entity would be exposed to the risk of liability for

virtually all property defects within its jurisdiction if this immunity were not granted.

So far as its own property is concerned, a public entity may be held liable under Chapter 2 (commencing with Section 830) for negligently failing to discover a dangerous condition by conducting reasonable inspections, or a public entity may be held liable under Section 815.6 if it does not exercise reasonable diligence to comply with any mandatory legal duty that it may have to inspect its property.

The immunity provided by this section covers negligent failure to make an inspection and negligence in the inspection itself. For example, the section makes the public entity immune from liability if its employee negligently fails to detect a defect in a building being inspected; but the section does not provide immunity where a public employee inspecting a building under construction negligently causes a plank to fall on a workman.

Section 818.8

Comment: This section provides public entities with an absolute immunity from liability for negligent or intentional misrepresentation. A similar immunity is provided public employees by Section 822.2, except that an employee may be held liable if he is guilty of actual fraud, corruption or actual malice. This section will provide, for example, a public entity with protection against possible tort liability where it is claimed that an employee negligently misrepresented that the public entity would waive the terms of a construction contract requiring approval before changes were made.

Section 820.2

Comment: This section restates the pre-existing California law. *Lipman v. Brisbane Elem. School Dist.*, 55 Cal. 2d 224, 11 Cal. Rptr. 97, 359 P. 2d 465 (1961); *Hardy v. Vial*, 48 Cal. 2d 577, 311 P. 2d 494 (1957); *White v. Towers*, 37 Cal. 2d 727, 235 P. 2d 209 (1951). The discretionary immunity rule is restated here in statutory form to ensure that, unless otherwise provided by statute, public employees will continue to remain immune from liability for their discretionary acts within the scope of their employment.

In the sections that follow, several immunities of public employees are set forth even though they have been regarded as within the discretionary immunity. These specific immunities are stated in statutory form so that the liability of public entities and employees may not be expanded by redefining "discretionary immunity" to exclude certain acts that had previously been considered as discretionary.

Section 820.6

Comment: This section broadens an immunity contained in former Government Code Section 1955 that applied only to actions pursuant to unconstitutional statutes. Like former Section 1955, this section provides immunity to an employee who acts in good faith, without malice, and under the apparent authority of an unconstitutional, invalid or inapplicable enactment, even though the employee may have been negligent in his good faith belief that the enactment was constitutional, valid and applicable.

Section 820.8

Comment: This section expresses a principle contained in several sections scattered through the codes and uncodified acts that limit a public employee's liability to liability for his own negligent or wrongful conduct. The section nullifies the holdings of a few old cases that some public officers are *vicariously liable* for the torts of their subordinates.

Section 821.4

Comment: This section grants immunity to a public employee for failure to make inspection, or for making negligent inspections, of private property. So far as a public employee's liability for public property is concerned, see Sections 840 to 840.6, relating to the liability of public employees for dangerous conditions of public property. For the scope of the immunity provided by this section, see comment to Section 818.6.

Section 821.6

Comment: The California courts have repeatedly held public entities and public employees immune from liability for this sort of conduct. *Dawson v. Martin*, 150 Cal. App.2d 379, 309 P.2d 915 (1957) (public entities). *White v. Towers*, 37 Cal.2d 727, 235 P.2d 209 (1951); *Coverstone v. Davies*, 38 Cal.2d 315, 239 P.2d 876 (1952); *Hardy v. Vial*, 48 Cal.2d 577, 311 P.2d 494 (1957) (public employees). This section continues the existing immunity of public employees; and, because no statute imposes liability on public entities for malicious prosecution, public entities likewise are immune from liability.

Section 822

Comment: This section makes clear that statutes which require a public employee to account for money in his official custody do not impose liability for a loss unless the loss is sustained as a result of his own negligent or wrongful act or omission. The section has no effect on liability based on a bond, since Section 814 provides that this part does not affect liability based on contract.

Section 822.2

Comment: See comment to Section 818.8.

Section 825

Comment: The sections in this article require public entities to pay claims and judgments against public employees that arise out of their public employment where the public entity has been tendered the defense. However, if the public entity provides the defense pursuant to a reservation of rights, it is required to pay a judgment, compromise or settlement only if the plaintiff establishes that the employee was in the scope of his employment at the time the claim against him arose.

Section 825.6

Comment: See comment to Section 825. This section is worded broadly to apply whenever the public entity is required to pay a judgment, whether the judgment is against the entity itself or against the employee. The entity has the right to recover the amount paid from the responsible employee whenever the employee has acted with actual malice, actual fraud or corruption.

Section 830.5

Comment: Subdivision (a) of this section makes applicable to public entities the same rule that applies in actions against private persons. It overrules cases that indicate that the happening of the accident is evidence that public property was in a dangerous condition. However, the section does not prevent the use of the doctrine of *res ipsa loquitur* in appropriate cases.

Subdivision (b) is a codification of a general rule established by case law. The evidence described in this subdivision might be admissible for a purpose other than to show that the public property was in a dangerous condition at the time of the injury.

Section 831.2

Comment: This section provides an absolute immunity from liability for injuries resulting from a natural condition of any unimproved public property. Thus, for example, under this section and Section 831.4, the State has an absolute immunity from liability for injuries resulting from natural conditions of a state park area where the only improvements are recreational access roads (as defined in Section 831.4) and hiking, riding, fishing and hunting trails.

This section and Section 831.4 continue and extend an existing policy adopted by the Legislature in former Government Code Section 54002. It is desirable to permit the members of the public to use public property in its natural condition and to provide trails for hikers and riders and roads for campers into the primitive regions of the State. But the burden and expense of putting such property in a safe condition and the expense of defending claims for injuries would probably cause many public entities to close such areas to public use. In view of the limited funds available for the acquisition and improvement of property for recreational purposes, it is not unreasonable to expect persons who voluntarily use unimproved public property in its natural condition to assume the risk of injuries arising therefrom as a part of the price to be paid for benefits received.

Section 831.4

Comment: See comment to Section 831.2.

Section 835

Comment: This section is similar to the Public Liability Act of 1923, under which cities, counties and school districts are liable for injuries proximately caused by the dangerous conditions of their property.

Although there is no provision similar to subdivision (a) in the Public Liability Act of 1923, the courts have held that entities are liable under that act for dangerous conditions created by the negligent or wrongful acts of their employees. *Pritchard v. Sully-Miller Contracting Co.*, 178 Cal. App.2d 246, 2 Cal. Rptr. 830 (1960).

Subdivision (b) declares the traditional basis for holding an entity liable for a dangerous condition of property: failure to protect against the hazard after notice. Unlike the 1923 Act, this section does not leave the question of notice to judicial construction. The requisite conditions for notice are stated in Section 835.2.

The section is not subject to the discretionary immunity that public entities derive from Section 815.2, for this chapter itself declares the limits of a public entity's discretion in dealing with dangerous conditions of its property.

Liability does not necessarily exist if the evidentiary requirements of this section are met. Even if the elements stated in the statute are established, a public entity may avoid liability if it shows that it acted reasonably in the light of the practicability and cost of pursuing alternative courses of action available to it. In addition to the defenses available to public entities under Section 835.4, a public entity also may use any other defense—such as contributory negligence or assumption of the risk—that is available under subdivision (b) of Section 815 to avoid liability under this section.

This section requires the plaintiff to show that the injury suffered was of a kind that was reasonably foreseeable. Thus, a person landing an airplane on a public road might not be able to recover for an injury resulting from striking a chuckhole, whereas a motorist might be able to recover for the injury resulting from striking the same hazard; for it is reasonably foreseeable that motorists will be injured by such a defect, but it is highly unlikely that airplanes will encounter the hazard.

Under this section, if an entity placed lights and barriers around a hole sufficient to remove any substantial risk to persons who would be foreseeably using the street with due care, the entity could not be held liable for any injuries caused by the condition, for the condition would not be "dangerous" within the meaning of Section 830. If the lights subsequently failed to function, a person injured from striking the hazard would have to show either that there was some negligence in preparing the lights or that, although the lights failed without fault on the part of the entity, the entity had notice of the failure and did not take appropriate precautions.

Section 835.2

Comment: This section sets forth the matters that must be established before a public entity may be charged with notice of a dangerous condition.

Under the Public Liability Act of 1923, the knowledge necessary to charge a public entity with notice of a dangerous condition has to be the knowledge of "the legislative body, board, or person authorized to remedy the condition." Subdivision (a), however, permits an entity to be charged with knowledge under the ordinary agency rules of imputed knowledge that would be applicable to a private person.

Under subdivision (a), as under the pre-existing law, actual knowledge by an entity of the existence of a particular condition is not a basis for the imposition of liability unless the entity also knew or should have known of the danger created by the condition. *Ellis v. City of Los Angeles*, 167 Cal. App.2d 180, 334 P.2d 37 (1959).

Under the Public Liability Act of 1923, public entities are at times charged with "constructive notice" of a defect because it would be

obvious upon an inspection and because it has existed for a substantial period of time. Subdivision (b) continues these rules. Under subdivision (b), the plaintiff has the burden of proving that the public entity had constructive notice. In addition, the subdivision makes clear that evidence is admissible to show (1) what would constitute a reasonable inspection system, and (2) what inspection system was used by the public entity. The admission of this evidence is necessary so that the issue of whether or not a public entity had constructive notice will turn on whether a reasonable inspection system would have disclosed the existence of the condition.

Section 844

Comment: A person in the custody of a law enforcement officer but undergoing medical treatment in a county hospital would be considered a prisoner as defined in this section. The work camps for prisoners would be considered penal or correctional facilities. Although a prisoner or ward of the juvenile court engaged in fire suppression would be considered a prisoner as defined in this section, a person on parole would not be considered to be a prisoner.

Section 844.6

Although this section was considered and rejected by the Senate Committee on Judiciary, the section was added to the statute by the Senate Committee on Finance.

The immunity provided to public entities by this section prevails over all other provisions of the statute. Thus, the public entity is immune for injuries to prisoners (which includes wards of the juvenile court) except that the public entity must pay judgments against public employees based on malpractice. In addition, the section provides public entities with immunity for injuries proximately caused by prisoners.

The section does not affect the liability of public employees, and an employee may be held liable for an injury to a prisoner or an injury caused by a prisoner even though the public entity is not liable.

A person injured by a dangerous condition of public property caused by a prisoner may recover from the public entity for his injury only if he is a visitor. A prisoner who is injured by a dangerous condition of public property may not recover for his injury from the public entity.

Section 845.2

Comment: This section grants an immunity for failure to provide a prison jail or penal or correctional facility or for failure to provide sufficient equipment, personnel or facilities therein. This immunity is justified on the same ground as the immunity provided by Section 845.

Notwithstanding the immunity provided by this section, except as provided in Section 844.6, a public entity or public employee may be held liable for failure to provide the equipment, personnel or facilities mentioned in this section if the conditions of liability stated in Chapter 2 (commencing with Section 830), relating to dangerous conditions of public property can be established.

Section 845.4

Comment: This section makes clear that liability exists for the intentional and unjustifiable interference with a basic legal right—the right of a person confined involuntarily to seek redress in the courts. To avoid a possible flood of unmeritorious actions, the section requires that a determination shall have been made that the confinement was illegal before an action for damages can be commenced. Such a determination might be a judicial or administrative determination that a prisoner should be released because his confinement was illegal.

Section 854

Comment: This section provides a broad definition of the term “medical facility” for the purposes of this chapter.

Section 854.2

Comment: This definition makes clear the meaning of the term “mental institution” as used in this chapter. See Section 854.4 for definition of “mental illness or addiction.”

Section 854.4

Comment: The term “mental illness or addiction” is defined to mean certain mental or emotional conditions for which a person may be committed to a public medical facility under the provisions of Welfare and Institutions Code Sections 5000 *et seq.* and 5100 *et seq.* (mental illness), 5075 *et seq.* (mental disorder bordering on mental illness), 5250 *et seq.* (mental deficiency), 5300 *et seq.* (epilepsy), 5350 *et seq.* (narcotic drug addiction), 5400 *et seq.* (habit forming drug addiction or dipsomania or inebriety), 5500 *et seq.* (sexual psychopathy), and 5600 *et seq.* (such mental abnormality as to evidence utter lack of power to control sexual impulses).

Section 854.8

Although this section was considered and rejected by the Senate Committee on Judiciary, the section was added to the statute by the Senate Committee on Finance.

The immunity provided to public entities by this section prevails over all other provisions of the statute. Thus, the public entity is immune for injuries to persons committed or admitted to mental institutions except that the public entity must pay judgments against public employees based on malpractice. In addition, the section provides public entities with immunity for injuries proximately caused by persons committed or admitted to mental institutions.

The section does not affect the liability of public employees, and an employee may be held liable for an injury to a person committed or admitted to a mental institution even though the public entity is not liable.

A person injured by a dangerous condition of public property caused by a person committed or admitted to a mental institution may recover from the public entity for his injury only if he is a visitor. A person committed or admitted to a mental institution who is injured by a dangerous condition of public property may not recover for his injury from the public entity.

Section 855.8

Comment: This section declares an immunity from liability for diagnosing or failing to diagnose that a person is afflicted with a condition for which he may be committed to an institution for the mentally ill or addicted. The section also provides an immunity for failing to prescribe for mental illness or addiction, but it does not provide immunity for malpractice where a public employee undertakes to prescribe for mental illness or addiction.

Section 856.2

Comment: The extent of freedom that must be accorded persons suffering from mental illness or addiction, and the nature of the precautions necessary to prevent escape of such persons, are matters that should be determined by the proper public officials unfettered by any fear that their decisions may result in liability.

Section 856.4

Comment: The determination of eligibility for admission to a public facility often involves a delicate exercise of judgment in the evaluation of complicated factual circumstances. Such a determination should not be influenced by concern for possible liabilities which the entity might incur if a refusal to extend service is later shown to have caused harm, for such concern might well frustrate and impede the execution of sound policy determinations to limit admission to the public facility to designated classes of individuals. Of course, where the public entity is under a mandatory duty to admit certain classes of persons, there should be no discretion to fail to comply with such duty.

Section 860

Comment: This chapter confers immunity upon public employees and public entities for their discretionary acts in the administration of tax laws. It is likely that the courts would confer an immunity for these acts under the general provisions of Section 820.2; but it appears desirable to make the immunity explicit in order to obviate the necessity for test cases to determine whether the discretionary immunity extends this far.

Section 860.2

Comment: See the comment to Section 860.

Section 860.4

Comment: See the comment to Section 860.

Section 895.8

Comment: This section makes the provisions of this chapter imposing joint and several liability apply to agreements made before its effective date. However, the provisions of this chapter governing contribution would not apply to agreements made before its effective date; where an existing agreement does not contain any provision indicating which public entity is to bear the ultimate financial burden, the right of contribution will be determined by the case law governing contribution between persons who are jointly liable.

APPENDIX III

SPECIAL REPORT BY ASSEMBLY COMMITTEE ON WAYS AND MEANS ON SENATE BILL No. 42¹

¹ Extract from Assembly Journal for June 15, 1963 (1963 Regular Session).

REQUEST FOR UNANIMOUS CONSENT TO PRINT IN JOURNAL

Mr. Crown was granted unanimous consent that the following letter of transmittal and Report Relative to Senate Bill No. 42 be ordered printed in the Journal:

LETTER OF TRANSMITTAL

CALIFORNIA LEGISLATURE
ASSEMBLY COMMITTEE ON WAYS AND MEANS

June 15, 1963

Hon. Jesse M. Unruh, Speaker

DEAR MR. SPEAKER: The Assembly Committee on Ways and Means, having considered Senate Bill No. 42 and having reported it "do pass as amended" on June 14, 1963, herewith submits this report concerning Senate Bill No. 42.

The report contains comments to reflect the actions taken on this bill by the Committee on Ways and Means. These comments should prove helpful in determining legislative intent.

I respectfully request that this report be printed in the Assembly Journal and that 100 additional copies of the Journal be printed to satisfy requests.

Respectfully submitted,

ROBERT W. CROWN, Chairman

REPORT OF ASSEMBLY COMMITTEE ON WAYS AND MEANS ON SENATE BILL NO. 42

In order to indicate more fully its intent with respect to Senate Bill No. 42, the Assembly Committee on Ways and Means makes the following report:

Except for the new or revised comments set out below, the comments contained under the various sections of Senate Bill No. 42 as set out in the *Recommendation of the California Law Revision Commission Relating to Sovereign Immunity, Number 1—Tort Liability of Public Entities and Public Employees* (January 1963), as revised and supplemented by the *Report of the Senate Committee on Judiciary on Senate Bill No. 42* as printed in the Senate Journal for April 24, 1963, reflect the intent of the Assembly Committee on Ways and Means in approving the various provisions of Senate Bill No. 42.

The following new and revised comments to various sections of Senate Bill No. 42 also reflect the intent of the Assembly Committee on Ways and Means in approving Senate Bill No. 42.

Section 831.4

Comment: See Comment to Section 831.2. This section will provide, for example, an absolute immunity from liability for injuries resulting from the condition of such roads as fire protection roads in timbered areas and irrigation district maintenance roads.

Section 831.8

Comment: This section provides a public entity with immunity from liability for the conditions of its reservoirs if the person injured was not using the property for a purpose for which the entity permitted or intended the property to be used.

The section also provides immunity to the State and to irrigation districts for conditions of certain facilities (canals, conduits, drains) used for the distribution of water if the person injured was not using the property for its intended purpose. Thus, even though no objection is made to the use of an irrigation canal for swimming, no liability will exist if a person is injured by a condition of the canal while he is swimming in it.

The immunities created by this section are not applicable in two situations that are defined in subdivisions (c) and (d). Of course, liability will not necessarily exist merely because a person can fit his case into these exceptions. The plaintiff must also meet the evidentiary burdens placed on him in other portions of this chapter, and the defendant may escape liability by showing the defensive matters it is entitled to show under other provisions of this chapter or under subdivision (b) of Section 815.

Under subdivision (d), if the person injured was under 12 years of age, the section's immunities are inapplicable if the use of the property by children was reasonably foreseeable, the condition was highly dangerous and not likely to be discovered or appreciated by children, and the condition was actually known to the entity sufficiently prior to the accident for the entity to have taken appropriate precautions. Private landowners are subject to liability under the same circumstances without regard to the age of the injured child under the so-called "attractive nuisance" doctrine.

Under subdivision (c), there is no immunity if the injured person was not violating the Penal Code provisions prohibiting trespassing on appropriately posted property, the condition was highly dangerous and so concealed that a mature, reasonable person using due care would not have discovered or anticipated it, and the condition was actually known to the entity sufficiently prior to the accident for the entity to have provided a warning sign or to have taken other appropriate precautions. This subdivision should be contrasted with the definition of "dangerous condition" in Section 830(a). Under Section 830(a) whether a condition is dangerous depends on the standard of care to be expected of foreseeable users of the property. Under this subdivision, liability

can exist only if a mature, reasonable person exercising due care would not have discovered or anticipated the condition. The liability that is permitted under this subdivision is similar to, but is somewhat more restrictive than, the liability to which private occupiers of land are subject when trespassers are injured by concealed, hazardous conditions of private property.

Section 844.6

Comment: The immunity provided to public entities by this section prevails over all other provisions of the statute. Thus, the public entity is immune from liability for injuries to prisoners (which includes wards of the juvenile court) except that the public entity must pay judgments based on malpractice against public employees licensed in one of the healing arts. In addition, the section provides public entities with immunity from liability for injuries proximately caused by prisoners.

This section will not prevent a person, other than a prisoner, from recovering for an injury caused by the dangerous condition of public property, nor does the section prevent recovery for an injury resulting from the operation of a motor vehicle by a public employee.

The section does not affect the liability of public employees, and an employee may be held liable for an injury to a prisoner or an injury caused by a prisoner even though the public entity is not liable. Other provisions of the statute, however, provide public employees with substantial immunity from liability for injuries to prisoners and injuries caused by prisoners.

Section 854.8

Comment: The immunity provided to public entities by this section prevails over all other provisions of the statute. Thus, the public entity is immune from liability for injuries to persons committed or admitted to mental institutions except that the public entity must pay judgments based on malpractice against public employees licensed in one of the healing arts. In addition, the section provides public entities with immunity from liability for injuries proximately caused by persons committed or admitted to mental institutions.

The section will not prevent a person—other than one committed or admitted to a mental institution—from recovering for an injury caused by the dangerous condition of public property. Nor does the section prevent recovery for an injury resulting from the operation of a motor vehicle by a public employee.

The section does not affect the liability of public employees, and an employee may be held liable for an injury to a person committed or admitted to a mental institution or an injury caused by such a person even though the public entity is not liable. Other provisions of the statute, however, provide public employees with substantial immunity from liability for injuries to persons committed or admitted to mental institutions and for injuries caused by such persons.

APPENDIX IV
SPECIAL REPORT BY SENATE COMMITTEE ON
JUDICIARY ON SENATE BILL No. 43¹

¹ Extract from Senate Journal for July 31, 1963 (1963 First Extraordinary Session).

MOTION TO PRINT REPORT RE SENATE BILL NO. 43

Senator Regan moved that the following letter of transmittal and the report of the Committee on Judiciary regarding Senate Bill No. 43 of the 1963 Regular Session be printed in the Journal, and that 100 additional copies of this day's Journal be printed for the Committee on Judiciary.

Motion carried.

LETTER OF TRANSMITTAL

CALIFORNIA LEGISLATURE
SENATE COMMITTEE ON JUDICIARY

Hon. Glenn M. Anderson
President of the Senate

DEAR SIR: The Senate Committee on Judiciary, having considered Senate Bill 43 during the 1963 Regular Session, and having made certain amendments to the bill as introduced, herewith submits this report concerning Senate Bill No. 43. The committee believes that this report will prove helpful in determining legislative intent.

Respectfully submitted,

EDWIN J. REGAN, Chairman

REPORT OF SENATE COMMITTEE ON JUDICIARY ON
SENATE BILL NO. 43

In order to indicate more fully the legislative intent with respect to Senate Bill No. 43, the Senate Committee on Judiciary makes the following report concerning Section 152 of Senate Bill No. 43:

Causes of Action Subject to Statute

Subdivision (a) of Section 152 provides that Senate Bill No. 43 "applies to all causes of action heretofore or hereafter accruing." The application of the bill to causes of action hereafter accruing requires no explanation, but examples of how the bill will affect causes of action

that heretofore accrued may be helpful in understanding and applying the bill.

Previously Barred Actions

Subdivision (b) of Section 152 provides that nothing in Senate Bill 43 revives or reinstates any cause of action that, on the effective date of Senate Bill No. 43, is barred by failure to comply with the applicable claims statute or by failure to commence an action thereon within the period prescribed by an applicable statute of limitations. Thus, where a cause of action is barred because of failure to comply with the formerly applicable claims statute, Senate Bill No. 43 does not revive it. And, for example, if the one-year statute of limitations on a personal injury has run on a cause of action against a city, Senate Bill No. 43 does not revive the cause of action—even though Senate Bill No. 43 provides a special six-month statute of limitations that does not commence until the claim is rejected or deemed to be rejected.

Claim Not Presented Before September 20, 1963

Subdivision (c) of Section 152 applies to cases where a cause of action is not barred on the effective date of Senate Bill No. 43 and a claim has not been presented prior to the effective date of Senate Bill No. 43—September 20, 1963. This subdivision provides that the claim in such a case shall be presented in compliance with Senate Bill No. 43. For example, if a claim is for a personal injury for which Senate Bill No. 43 (Govt. Code § 911.2) requires that a claim be presented within 100 days, the claim must be presented within 100 days after the effective date of Senate Bill No. 43 (subject, of course, to Govt. Code § 911.4). Thus, claims that formerly could have been presented to the State within two years after a disability ceased (Govt. Code § 646), claims that formerly could have been presented to the State within two years (Govt. Code § 644) or one year (Govt. Code § 643) after the cause of action accrued, and claims that were required to be presented to local entities within 100 days (Govt. Code § 715) or one year (Govt. Code § 715) after they accrued, must all be presented within the time specified in Govt. Code §§ 911.2 to 912.2, which would be December 30, 1963, for a claim required to be presented within 100 days, or September 21, 1964, for a claim required to be presented within one year. (Note that since the last day of the one-year period falls on Sunday, September 20, the deadline is extended to Monday, September 21 by Code Civ. Proc. § 12a. The last day to obtain leave to file a late 100-day claim would also be September 21, 1964.) However, with respect to these claims, if the claim relates to a cause of action not recognized by Senate Bill No. 42, subdivision (d)(1) of Section 45 of Senate Bill No. 42 would be applicable and would shorten the time for presenting the claim in some cases.

Claim Presented But Not Acted Upon Prior to September 20, 1963

Subdivision (d) of Section 152 covers claims that were presented prior to the effective date of Senate Bill No. 43 (September 20, 1963). Where a claim was presented to the public entity but not acted on, the claim is deemed to have been presented on the effective date of Senate Bill No. 43 (September 20, 1963) and the public entity has 45 days

within which to act on the claim, November 4, 1963, being the last date for the governing board or other authorized agent or body to act on the claim unless the period is extended by agreement. The date the claim is rejected or deemed to be rejected would determine the last date for commencement of action against the public entity on the rejected claim.

Claim Presented and Rejected Prior to September 20, 1963

These claims are covered by subdivision (d) of Section 152 of Senate Bill No. 43. For convenience in discussing them they are divided into four types.

(a) *Cause of action recognized under pre-Muskopf law and under Senate Bill No. 42.* Where a claim is based on a cause of action which was maintainable against the public entity before the *Muskopf* and *Lipman* decisions, the cause of action is one recognized by Senate Bill No. 42, a claim was presented and rejected prior to the effective date of Senate Bill No. 43, and the applicable statute of limitations had not run on the effective date of Senate Bill No. 43, then the action must be commenced within the time provided by the statute of limitations that applied when the claim was rejected; the six-months statute provided in Senate Bill No. 43 is not applicable because the claim was rejected before Senate Bill No. 43 took effect. In other words, the six-months statute of limitations provided in Senate Bill No. 43 would not apply to the claim, although other provisions such as those relating to compromise of actions and payment of judgments would apply.

(b) *Cause of action recognized under pre-Muskopf law but not under Senate Bill No. 42.* Where a claim is based on a cause of action which was maintainable against the public entity before the *Muskopf* and *Lipman* decisions but is not recognized by Senate Bill No. 42, a claim was presented and rejected prior to the effective date of Senate Bill No. 43, and the applicable statute of limitations had not run on the effective date of Senate Bill No. 43, then the action must be commenced within the time provided by the statute of limitations that applied when the claim was rejected, except that subdivision (d)(2) of Section 45 of Senate Bill No. 42 applies to such a claim and may shorten the time for commencing the action in some cases.

(c) *Cause of action not recognized under pre-Muskopf law but recognized under Senate Bill No. 42.* Where a claim is based on a cause of action which was not maintainable against the public entity before the *Muskopf* and *Lipman* decisions, the cause of action is one recognized by Senate Bill No. 42 and a claim was presented and rejected prior to the effective date of Senate Bill No. 43, the action must be commenced within six months from the effective date of Senate Bill No. 43, which would be March 20, 1964, since Chapter 1404 of the Statutes of 1961 provides that the statute of limitations governing new tort causes of action which accrued between February 27, 1961 and September 20, 1963, against previously immune governmental entities shall not commence to run until September 20, 1963.

(d) *Cause of action not recognized under pre-Muskopf law nor under Senate Bill No. 42 but recognized under Muskopf and Lipman cases.* Where a claim is based on a cause of action not maintainable

against a public entity before the *Muskopf* and *Lipman* decisions, and not recognized by Senate Bill No. 42, where the cause of action is one created by the *Muskopf* and *Lipman* decisions and cannot be abrogated constitutionally by Senate Bill No. 42, and where a claim was presented and rejected prior to the effective date of Senate Bill No. 43, then the action must be commenced within six months from the effective date of Senate Bill No. 43, which would be March 20, 1964. By virtue of Chapter 1404 of the Statutes of 1961 the statute of limitations would not commence to run until September 20, 1963. In cases covered by subdivision (b) of Govt. Code § 945.6 the limitation provided by Section 45(d)(2) of Senate Bill No. 42 would be applicable to shorten the time for commencing the action in some cases.

Summary

The following table summarizes the above information:

No claim presented before September 20, 1963	Period for presenting claim commences to run on September 20, 1963, and time limits in Senate Bill No. 43 apply. (For causes of action not recognized by Senate Bill No. 42, Section 45 (d)(1) of Senate Bill No. 42 applies and may shorten time limits in some cases.)
Claim presented but not acted on by public entity before September 20, 1963	Claim is deemed to be presented on September 20, 1963, and time limits in Senate Bill No. 43 apply.
Claim presented and rejected by public entity before September 20, 1963	
(a) Cause of action recognized under pre- <i>Muskopf</i> law and recognized under Senate Bill No. 42	Statute of limitations that applied when claim was rejected applies.
(b) Cause of action recognized under pre- <i>Muskopf</i> law not recognized under Senate Bill No. 42	Statute of limitations that applied when claim was rejected applies, except that Section 45 (d)(2) of Senate Bill No. 42 applies and may shorten time limits in some cases.
(c) Cause of action not recognized under pre- <i>Muskopf</i> law, but recognized under Senate Bill No. 42	Six-month statute of limitations provided by Senate Bill No. 43 applies, time commencing to run from September 20, 1963.

- (d) Cause of action not recognized under pre-*Muskopf* law and not recognized under Senate Bill No. 42 but recognized under *Muskopf* and *Lipman* cases
- Six-month statute of limitations provided by Senate Bill No. 43 applies, time commencing to run from September 20, 1963.

O