

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

RECOMMENDATION

relating to

Sovereign Immunity

**Number 7—Amendments and Repeals of Inconsistent
Special Statutes**

March 1963

CALIFORNIA LAW REVISION COMMISSION

School of Law
Stanford University
Stanford, California

EDMUND G. BROWN
Governor



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March 1, 1963

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

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The California Law Revision Commission was authorized by Resolution Chapter 202 of the Statutes of 1957 to make a study to determine whether the doctrine of sovereign or governmental immunity in California should be abolished or revised.

The Commission herewith submits its recommendation on one portion of this subject—amendments and repeals of inconsistent special statutes. This is the seventh in a series of reports prepared for the 1963 legislative session containing the recommendations of the Commission relating to various aspects of the subject of sovereign immunity. The Commission also has published a research study relating to sovereign immunity prepared by its research consultant, Professor Arvo Van Alstyne of the School of Law, University of California at Los Angeles.

Respectfully submitted,

HERMAN F. SELVIN, *Chairman*

RECOMMENDATION OF THE CALIFORNIA LAW REVISION COMMISSION

relating to

SOVEREIGN IMMUNITY

Number 7—Amendments and Repeals of Inconsistent Special Statutes

This is the seventh in a series of reports containing recommendations of the Law Revision Commission relating to sovereign immunity. The recommended comprehensive legislation contained in the previous reports provides for the repeal or amendment of all inconsistent and overlapping statutes of a general nature. There are, however, a large number of statutes scattered throughout the codes and the uncodified acts—hereinafter referred to as “special statutes”—that relate to but one agency or one public entity and that are inconsistent with the general legislation proposed by the Commission. The Commission has studied these special statutes to determine what adjustments are necessary to conform them to the general legislation relating to sovereign immunity.

These special statutes reflect a variety of inconsistent policies and express similar policies in a variety of inconsistent ways. Some create broad immunities and others create wide areas of liability. Some entities are required to pay all judgments against their employees—even where the employee involved has acted maliciously—while other entities are required to pay such judgments only where the employee involved was free from malice. Some entities and employees are granted immunity from liability even when guilty of serious and wilful misconduct.

The recommended general statutes relating to the liability of public entities were carefully drafted to balance the interest of the public in having government function effectively and the interest of persons injured by governmental activities in receiving compensation. The recommended legislation would, to a large degree, bring order out of the chaotic condition of the law relating to governmental immunity. But the confusion and inconsistencies that exist in regard to most public entities will continue to exist for those few entities created by special statutes unless the statutes relating to those entities are also adjusted to conform to the recommended general legislative scheme. Moreover, unless conforming adjustments were made, the possibility that some of these special statutes would be repealed by implication would create additional uncertainty.

Therefore, the Commission recommends that these special statutes be adjusted to conform to the recommended general legislation relating to sovereign immunity. The rights of a person injured would then not be dependent upon the fortuitous circumstance of whether he is injured by an employee of a public entity organized under a general authorizing act or an employee of a public entity organized by special act. The adjustments that should be made to these special statutes are as follows:

1. Business and Professions Code Section 6904.5 provides a broad personal immunity from liability for the Director of Professional and Vocational Standards, the employees of the Collection Agency Licensing Bureau, and conservators appointed by the Director in enforcing the laws permitting the Director to appoint a conservator to take possession of the business of a collection agency (Sections 6904 to 6904.6, inclusive, of the Business and Professions Code). This section would be superseded by various provisions of the recommended general legislation. Recommended Government Code Section 820.2 provides that public employees are immune from liability for their discretionary acts. Section 820.4 provides that a public employee is not liable for his acts in the execution of an enactment. Section 820.6 provides an immunity from liability for acting under the apparent authority of an unconstitutional, invalid or inapplicable enactment. Section 821 provides an immunity for failing to enforce the law. And, where an employee is liable for an act done in the scope of his employment, the employing public entity is required to pay the judgment without obligation for reimbursement by the employee unless the employee acted with actual fraud, corruption or actual malice. As these provisions would provide ample protection to the personnel mentioned in Business and Professions Code Section 6904.5, that section would no longer be needed and should be repealed.

2. Similarly, Water Code Section 8535 provides a broad immunity to the Sacramento and San Joaquin Drainage District, the Reclamation Board and the members of the Board for injuries resulting from certain operations of the district. The recommended sections mentioned in the preceding paragraph would provide ample protection to the public employees mentioned in Section 8535. Moreover, the immunities of a public employee would also protect his employing public entity under the provisions of subdivision (b) of recommended Government Code Section 815.2. Hence, there would no longer be a need for Section 8535 and it, too, should be repealed.

3. In several uncodified acts creating special districts, there are provisions granting an immunity from liability to specified public employees for the acts of subordinate employees unless the specified employee appointed the subordinate with actual knowledge or notice that the subordinate was inefficient or incompetent, or unless the specified employee retained the subordinate after obtaining knowledge or notice of the inefficiency or incompetency of the subordinate. These provisions would be superseded by recommended Government Code Section 820.8, which grants all public employees an immunity from any liability for the acts or omissions of other employees, and by Section 820, which makes a public employee liable for his own negligent or wrongful act

or omission. Thus, Section 820 imposes liability upon a public employee for his failure to exercise due care in selecting or appointing a subordinate employee or for failing to exercise due care to remove a subordinate employee whose continued retention creates an undue risk of injury. Accordingly, these provisions of the special statutes—which express in a variety of inconsistent ways the principles embodied in the recommended comprehensive legislation—should be repealed.¹

4. Somewhat similar to the special statutes just mentioned are a few special statutes that provide specified public employees with an immunity from liability except for their own negligence or misconduct. These special statutes would be superseded by recommended Government Code Section 820.8, which grants all public employees an immunity from liability for the acts or omission of others. These provisions—found in Section 23 of the Contra Costa Water Agency Act, Section 27 of the Mojave Water Agency Law, and Section 49 of the Orange County Water District Act—also should be repealed.

5. A large group of special statutes relating to specific districts require the district to pay a judgment against an employee without obligation for repayment by the employee. Some of these special statutes require the public entity to pay such judgments except where the employee was guilty of actual fraud or malice, but others require the entity to pay such judgments in any case. These provisions would be superseded by the provisions of recommended Government Code Sections 825-825.6, which require a public entity to pay a judgment against its employee if it arises out of an act or omission in the scope of his employment and he requests the entity to defend the action. The sections of the recommended comprehensive statute also permit the public entity to recover the amount paid upon such a judgment from an employee who was guilty of actual fraud, corruption or actual malice.²

¹ These provisions are found in Section 36 of the Alpine County Water Agency Act, Section 9.2 of the Amador County Water Agency Act, Section 76 of the Antelope Valley-East Kern County Water Agency Law, Section 26 of the Crestline-Lake Arrowhead Water Agency Act, Section 24 of the Desert Water Agency Law, Section 35 of the El Dorado County Water Agency Act, Section 9.1 of the Kern County Water Agency Act, Section 14 of the Kings River Conservation District Act, Section 7.2 of the Mariposa County Water Agency Act, Section 36 of the Nevada County Water Agency Act, Section 7.2 of the Placer County Water Agency Act, Section 24 of the San Geronio Pass Water Agency Law, Section 7.2 of the Sutter County Water Agency Act, Section 24 of the Upper Santa Clara Valley Water Agency Law, Section 35 of the Yuba-Bear River Basin Authority Act, and Section 7.2 of the Yuba County Water Agency Act.

² Provisions that should be repealed in light of the recommended comprehensive statute are found in Section 38 of the Alpine County Water Agency Act, Section 9.4 of the Amador County Water Agency Act, Section 76 of the Antelope Valley-East Kern County Water Agency Law, Section 23 of the Contra Costa Water Agency Act, Section 26 of the Crestline-Lake Arrowhead Water Agency Act, Section 24 of the Desert Water Agency Law, Section 37 of the El Dorado County Water Agency Act, Section 9.3 of the Kern County Water Agency Act, Section 17 of the Kings River Conservation District Act, Section 7.4 of the Mariposa County Water Agency Act, Section 27 of the Mojave Water Agency Law, Section 33 of the Nevada County Water Agency Act, Section 7.4 of the Placer County Water Agency Act, Section 24 of the San Geronio Pass Water Agency Law, Section 7.4 of the Sutter County Water Agency Act, Section 24 of the Upper Santa Clara Valley Water Agency Law, Section 37 of the Yuba-Bear River Basin Authority Act, and Section 7.4 of the Yuba County Water Agency Act.

6. Under the common law, a public employee who entered private property under the authority of law and then committed a tortious act was held to be a trespasser *ab initio* and liable for all damages caused from the time of the original entry. Many statutes have been enacted in California to modify this common law rule. Recommended Government Code Section 821.8 provides an immunity to every public employee from liability for entry on property under authority of law except for such damage as is proximately caused by his own negligent or wrongful conduct. Hence, the special provisions found scattered throughout the codes and uncodified acts to accomplish the same result would no longer be necessary and should be repealed.³

7. In contrast with the special statutes mentioned in paragraph 5, *supra*, which impose liability on many public entities for the acts of their employees, there are a few code sections that grant particular state employees sweeping immunities from liability. Because subdivision (b) of recommended Government Code Section 815.2 provides that the employing public entity is immune from liability where the employee enjoys an immunity, these sweeping immunities would immunize the State from liability as well. These sections directly conflict with the policy of liability established in existing code sections—such as Government Code Section 1953, relating to dangerous conditions of public property—as well as the policies contained in the recommended comprehensive legislation relating to the liability of public entities.

These sections were apparently placed in the codes to protect the individual employees involved from personal liability. They are superseded by various provisions of the recommended comprehensive legislation. Under the comprehensive legislation relating to liability, a public employee is immune from liability for his discretionary acts, even where the discretion is abused (Section 820.2); he is immune from liability for executing a statute with due care (Section 820.4); he is immune from liability for acting under the apparent authority of unconstitutional, invalid or inapplicable statutes or regulations (Section 820.6); he is not liable for the acts of others (Section 820.8); he is immune from liability for failing to enforce the law or for adopting or failing to adopt regulations (Section 821); he is immune from liability for granting, suspending or revoking permits and licenses—or for failing to do so (Section 821.2); he is immune from liability for failure to make an inspection, or to make an adequate inspection, of any property (Section 821.4); and he is immune from liability for malicious prosecution (Section 821.6). Even in those

³ Such provisions are found in Business and Professions Code Section 5312, Public Resources Code Section 4006.6, Public Utilities Code Section 21635, Section 5 of the Alameda County Flood Control and Water Conservation District Act, Section 5 of the Contra Costa County Flood Control and Water Conservation District Act, Section 5 of the Contra Costa County Storm Drainage District Act, Section 6 of the Del Norte County Flood Control District Act, Section 6 of the Humboldt County Flood Control District Act, Section 5 of the Lake County Flood Control and Water Conservation District Act, Section 5 of the Marin County Flood Control and Water Conservation District Act, Section 5 of the Monterey County Flood Control and Water Conservation District Act, Section 5 of the Napa County Flood Control and Water Conservation District Act, Section 6 of the San Benito County Water Conservation and Flood Control District Act, Section 5 of the San Joaquin Flood Control and Water Conservation District Act, Section 5 of the San Luis Obispo County Flood Control and Water Conservation District Act, Section 5 of the Santa Barbara County Flood Control and Water Conservation District Act and Section 5 of the Santa Clara County Flood Control and Water Conservation District Act.

areas where the public employee may be subjected to liability, the employing public entity is required to defend the public employee in any action brought against him (Section 995 *et. seq.*) and to pay any judgment recovered against the employee (Sections 825 to 825.6, inclusive). Hence, the broad immunities granted in existing sections would no longer be needed to protect the individual public employee from personal liability, and their continued existence would prevent persons injured by the negligence or wilful misconduct of some public employees from obtaining any compensation for their injuries. These provisions, therefore, should be repealed.⁴

8. In many of the special district acts, there are provisions relating to sections that should be repealed. These sections, too, should be repealed in view of the proposed repeal of the sections to which they refer.

The Commission's recommendations would be effectuated by enactment of Senate Bills 483, 484 and 499, introduced at the 1963 Regular Session of the California Legislature. (Since many of the individual sections are repetitious, only the titles of these bills are set out below in order to provide a list of the sections proposed to be amended or repealed.)

SENATE BILL No. 483

An act to repeal Section 6904.5 of the Business and Professions Code, and to repeal Section 8535 of the Water Code, and to repeal Sections 36, 37 and 38 of the Alpine County Water Agency Act (Chapter 1896, Statutes of 1961), and to repeal Sections 9.2, 9.3 and 9.4 of the Amador County Water Agency Act (Chapter 2137, Statutes of 1959), and to repeal Section 76 of the Antelope Valley-East Kern County Water Agency Law (Chapter 2146, Statutes of 1959), and to repeal Section 23 of the Contra Costa Water Agency Act (Chapter 518, Statutes of 1957), and to repeal Section 26 of Chapter 40 of the Statutes of 1962 (1st Ex. Sess.) (Crestline-Lake Arrowhead Water Agency Act), and to repeal Section 24 of the Desert Water Agency Law (Chapter 1069, Statutes of 1961), and to repeal Sections 35, 36 and 37 of the El Dorado County Water Agency Act (Chapter 2139, Statutes of 1959), and to repeal Sections 9.1, 9.2 and 9.3 of the Kern County Water Agency Act (Chapter 1003, Statutes of 1961), and to repeal Sections 14, 16 and 17 of the Kings River Conservation District Act (Chapter 931, Statutes of 1951), and to repeal Sections 7.2, 7.3 and 7.4 of the Mariposa County Water Agency Act (Chapter 2036, Statutes of 1959), and to repeal Section 27 of the Mojave Water Agency Law (Chapter 2146, Statutes of 1959), and to repeal Sections 36, 37 and 38 of the Nevada County Water Agency Act (Chapter 2122, Statutes of 1959), and to amend Section 49 of the

⁴ These provisions are found in Agricultural Code Sections 748, 1300.21, 2185, 2916, 3407, 5084, 5406 and 5571.

Orange County Water District Act (Chapter 924, Statutes of 1933), and to repeal Sections 7.2, 7.3 and 7.4 of the Placer County Water Agency Act (Chapter 1234, Statutes of 1957), and to repeal Section 24 of the San Geronio Pass Water Agency Law (Chapter 1435, Statutes of 1961), and to repeal Sections 7.2, 7.3 and 7.4 of the Sutter County Water Agency Act (Chapter 2088, Statutes of 1959), and to repeal Section 24 of the Upper Santa Clara Valley Water Agency Law (Chapter 28, Statutes of 1962 (1st Ex. Sess.)), and to repeal Sections 35, 36 and 37 of the Yuba-Bear River Basin Authority Act (Chapter 2131, Statutes of 1959), and to repeal Sections 7.2, 7.3 and 7.4 of the Yuba County Water Agency Act (Chapter 788, Statutes of 1959), relating to the liability of public officers, agents and employees.

SENATE BILL No. 484

An act to amend Sections 748, 5084, 5406, and 5571 of, and to repeal Sections 1300.21, 2185, 2916, and 3407 of, the Agricultural Code, relating to the liability of public entities and public officers, agents, and employees.

SENATE BILL No. 499

An act to amend Section 5312 of the Business and Professions Code, and to amend Section 4006.6 of the Public Resources Code, and to amend Section 21635 of the Public Utilities Code, and to amend Section 5 of the Alameda County Flood Control and Water Conservation District Act (Chapter 1275, Statutes of 1949), and to amend Section 5 of the Contra Costa County Flood Control and Water Conservation District Act (Chapter 1617, Statutes of 1951), and to amend Section 5 of the Contra Costa County Storm Drainage District Act (Chapter 1532, Statutes of 1953), and to amend Section 6 of the Del Norte Flood Control District Act (Chapter 166, Statutes of 1955), and to amend Section 6 of the Humboldt County Flood Control District Act (Chapter 939, Statutes of 1945), and to amend Section 5 of the Lake County Flood Control and Water Conservation District Act (Chapter 1544, Statutes of 1951), and to amend Section 5 of the Marin County Flood Control and Water Conservation District Act (Chapter 666, Statutes of 1953), and to amend Section 5 of the Monterey County Flood Control and Water Conservation District Act (Chapter 699, Statutes of 1947), and to amend Section 5 of the Napa County Flood Control and Water Conservation District Act (Chapter 1449, Statutes of 1951), and to amend Section 6 of the San Benito County Water Conservation and Flood Control District Act (Chapter 1598, Statutes of 1953), and to amend Section 5 of the San Joaquin Flood Control and Water Conservation District Act (Chapter 46, Statutes of

1956 (1st Ex. Sess.), and to amend Section 5 of the San Luis Obispo County Flood Control and Water Conservation District Act (Chapter 1294, Statutes of 1945), and to amend Section 5 of the Santa Barbara County Flood Control and Water Conservation District Act (Chapter 1057, Statutes of 1955), and to amend Section 5 of the Santa Clara County Flood Control and Water Conservation District Act (Chapter 1405, Statutes of 1951), relating to liability of public officers, agents and employees for entry on property.

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