

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

RECOMMENDATION

relating to

Sovereign Immunity

Number 8—Revisions of the Governmental Liability Act

Liability of Public Entities for Ownership and Operation of Motor Vehicles

Claims and Actions Against Public Entities and Public Employees

January 1965

CALIFORNIA LAW REVISION COMMISSION

School of Law

Stanford University

Stanford, California

CALIFORNIA LAW REVISION COMMISSION

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January 1965

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

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

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

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

Respectfully submitted,

JOHN R. McDONOUGH, JR.
Chairman

RECOMMENDATION OF THE CALIFORNIA LAW REVISION COMMISSION

relating to

SOVEREIGN IMMUNITY

Number 8—Revisions of the Governmental Liability Act BACKGROUND

In 1963, upon the recommendation of the Law Revision Commission,¹ the Legislature enacted comprehensive legislation dealing with the liability of public entities and their employees.² This legislation was designed to meet the most pressing problems created by the decision of the California Supreme Court in *Muskopf v. Corning Hospital District*, 55 Cal.2d 211, 11 Cal. Rptr. 89, 359 P.2d 457 (1961).

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

Liability and Immunity of Public Entities and Public Employees

Because of the recent enactment of this legislation and because additional time is needed in which to appraise its effect, the Commission makes no recommendation at this time in regard to the provisions of the 1963 legislation that relate to substantive rules of liability and immunity of public entities and public employees. However, the provisions of the Vehicle Code relating to liability arising out of ownership or operation of motor vehicles were not specifically dealt with in 1963. These provisions, which are separately discussed below, are in need of clarification.

¹ 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).

² 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.)

Liability of Public Entities for Ownership and Operation of Motor Vehicles

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

(1) Vehicle Code Section 17001 is amended to recognize that governmental liability may exist for intentional as well as negligent torts committed with a motor vehicle. Liability for intentional torts committed in the scope of employment exists generally under Government Code Section 815.2. See VAN ALSTYNE, CALIFORNIA GOVERNMENT TORT LIABILITY § 7.67 (Cal. Cont. Ed. Bar 1964).

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

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

Claims and Actions Against Public Entities and Public Employees

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

Claims Procedures Established by Agreement or by Charter, Ordinance, or Regulation

The 1963 legislation permits the establishment of a claims procedure by agreement between public entities and persons contracting with them and, as to claims not governed by the statute, also authorizes the establishment of local claims procedures by charter, ordinance, or regulation. The existing law contains certain minimum procedural limitations on claims procedures established by charter, ordinance, or regulation. The Commission recommends that these procedural limitations be clarified and, also, that similar procedural protection be provided

for those procedures established by agreement. These minimum protections may be summarized as follows:

(1) No claims procedure may require a shorter time for the presentation of a claim than 100 days after the accrual of the cause of action nor provide a longer time for board consideration than 45 days after the presentation of the claim (unless the time is extended by separate agreement).

(2) No claims procedure may authorize the consideration, settlement, or payment of a claim by a claims board or commission or by a public employee except as authorized by the 1963 legislation in Government Code Sections 935.2-935.6.

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

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

Late Claim Procedure

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

(1) Following a public entity's rejection of an application for leave to present a late claim, the injured person should be able to petition a court for an order dispensing with the necessity of presenting a claim as a prerequisite to suit. If the court rules in his favor, suit on the claim should be permitted without the necessity of presenting a claim to the board as is now required by the 1963 legislation.

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

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

Roster of Public Agencies

Legislation enacted in 1963 on recommendation of the State Bar requires that certain local public entities provide and maintain in a Roster of Public Agencies certain information regarding the agency that is needed to enable or assist a person to comply with any applicable claims presentation procedures. The Commission recommends that this legislation be clarified so that:

(1) It will be clear that the presentation of a claim in accord with the information contained in the Roster will be deemed sufficient pres-

entation to the public entity whether or not the information contained in the Roster is consistent with the actual facts.

(2) No claim need be presented if a public entity that is required by law to comply with the Roster requirements has failed to do so within 70 days after the cause of action has accrued—a period of time fair both to the entity and the claimant.

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

PROPOSED LEGISLATION

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

Liability of Public Entities for Ownership and Operation of Motor Vehicles

An act to amend Sections 17000, 17001, and 17004 of, and to repeal Section 17002 of, and to add Section 17002 to, the Vehicle Code, relating to liability arising out of ownership or operation of vehicles.

The people of the State of California do enact as follows:

SECTION 1. Section 17000 of the Vehicle Code is amended to read:

17000. As used in this chapter : ; ~~“public agency” means the State, any county, municipal corporation, district and political subdivision of the State, or the State Compensation Insurance Fund.~~

(a) *“Employee” includes an officer, employee, or servant, whether or not compensated, but does not include an independent contractor.*

(b) *“Employment” includes office or employment.*

(c) *“Public entity” includes the state, the Regents of the University of California, a county, city, district, public authority, public agency, and any other political subdivision or public corporation in the state.*

Comment. This amendment makes applicable to motor vehicle cases the same definitions that apply to other tort actions against public entities. See GOVT. CODE §§ 810.2, 810.4, and 811.2.

SEC. 2. Section 17001 of said code is amended to read:

17001. ~~Any public agency owning any motor vehicle is responsible to every person who sustains any damage by reason of death, or injury to person or property as the result of the negligent operation of the motor vehicle by an officer, agent, or employee or as the result of the negligent operation of any other motor vehicle by any officer, agent, or employee when acting within the scope of his office, agency, or employment. The injured person may sue the public agency in any court of competent jurisdiction in this State in the manner directed by law.~~

A public entity is liable for death or injury to person or property proximately caused by a negligent or wrongful act or omission in the operation of any motor vehicle by an employee of the public entity acting within the scope of his employment.

Comment. The Governmental Liability Act specifically imposes liability on public entities for the intentional as well as the negligent torts committed by public employees in the scope of their employment. This amendment removes any doubt which may exist concerning the applicability of this principle to torts involving the operation of motor vehicles. See VAN ALSTYNE, CALIFORNIA GOVERNMENT TORT LIABILITY § 7.67 (Cal. Cont. Ed. Bar 1964).

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

SEC. 3. Section 17002 of said code is repealed.

~~17002. If there is recovery under this chapter against a public agency, it shall be subrogated to all the rights of the person injured against the officer, agent, or employee and may recover from the officer, agent, or employee the total amount of any judgment and costs recovered against the public agency, together with costs therein.~~

Comment. Vehicle Code Section 17002, which grants a right of subrogation against the public employee to a public entity vicariously liable for his negligent operation of a motor vehicle, probably was impliedly repealed by the 1963 legislation which makes a public entity ultimately liable for the torts of public personnel within the scope of their public service unless the officer, servant, or employee was guilty of actual fraud, corruption, or actual malice. See GOVT. CODE § 825.2. It should, therefore, be explicitly repealed.

SEC. 4. Section 17002 is added to said code, to read:

17002. Subject to Article 4 (commencing with Section 825) of Chapter 1 of Part 2 of Division 3.6 of Title 1 of the Government Code, a public entity is liable for death or injury to

person or property to the same extent as a private person under the provisions of Article 2 (commencing with Section 17150) of this chapter.

Comment. Prior to the decision of the California Supreme Court in *Muskopf v. Corning Hospital District*, 55 Cal.2d 211, 11 Cal. Rptr. 89, 359 P.2d 457 (1961), the liability of public entities as vehicle owners had been limited by judicial decision to vehicles maintained for use in "proprietary" activities; no vehicle ownership liability existed where the publicly owned vehicle was maintained solely for use in "governmental" activities. This "governmental-proprietary" distinction, however, was abolished by the *Muskopf* decision and by the 1963 legislation enacting the Governmental Liability Act. Hence, it is probable that ownership liability exists today for public entities. See VAN ALSTYNE, CALIFORNIA GOVERNMENT TORT LIABILITY § 7.65 (Cal. Cont. Ed. Bar 1964). The addition of Section 17002 to the Vehicle Code states this liability explicitly. Of course, liability based solely on vehicle ownership and not arising out of a master-servant relationship is only a secondary liability that is expressly limited in dollar amount. See VEHICLE CODE §§ 17151, 17152.

The reference at the beginning of this section to the indemnification provisions of the Governmental Liability Act makes it clear that these provisions, rather than Vehicle Code Section 17153, control subrogation rights of the public entity where liability is based upon the acts or omissions of public personnel acting within the scope of their public employment. This does not, of course, affect the application of the subrogation rights expressed in Section 17153 where the liability of the public entity is based solely upon vehicle ownership and does not arise by reason of the entity's vicarious responsibility for the acts or omissions of public personnel acting within the scope of public employment.

SEC. 5. Section 17004 of said code is amended to read:

17004. ~~No member of any police or fire department maintained by a county, city, or district, and no member of the California Highway Patrol or employee of the Division of Forestry, is~~ A public employee is not liable for civil damages on account of personal injury to or death of any person or damage to property resulting from the operation, in the line of duty, of an authorized emergency vehicle while responding to an emergency call or when in the immediate pursuit of an actual or suspected violator of the law, or when responding to but not upon returning from a fire alarm or other emergency call.

Comment. This amendment extends to all public employees the immunity granted by this section. This extension of immunity is appropriate in light of the broad definition of "authorized emergency vehicle" contained in Vehicle Code Section 165 (added by Cal. Stats. 1961, Ch. 653, § 12, p. 1858).

Claims and Actions Against Public Entities and Public Employees

An act to amend Sections 910, 910.4, 911.4, 911.6, 912.2, 912.4, 915, 930, 930.2, 935, 935.2, 935.4, 943, 945.4, 945.6, 945.8, 950.2, 950.4, 950.6, 960.4, 53050, and 53051 of, to add Sections 930.4, 930.6, 946.4, 946.6, 960.2, 960.3, and 960.8 to, and to repeal Sections 912, 945.5, 960.2, and 53052 of, the Government Code, relating to the liability of public entities and public officers, servants, and employees.

The people of the State of California do enact as follows:

SECTION 1. Section 910 of the Government Code is amended to read:

910. A claim shall be presented by the claimant or by a person acting on his behalf and shall show:

- (a) The name and post office address of the claimant;
- (b) The post office address to which the person presenting the claim desires notices to be sent;
- (c) The date, place and other circumstances of the occurrence or transaction which gave rise to the claim asserted;
- (d) A general description of the indebtedness, obligation, injury, damage or loss incurred so far as it may be known at the time of presentation of the claim; ~~and~~
- (e) The name or names of the public employee or employees causing the injury, damage, or loss, if known ; *and*
- (f) The amount claimed as of the date of presentation of the claim, including the estimated amount of any prospective injury, damage, or loss, insofar as it may be known at the time of the presentation of the claim, together with the basis of computation of the amount claimed.

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

SEC. 2. Section 910.4 of said code is amended to read:

910.4. The board may provide forms specifying the information to be contained in claims against the public entity. If the board provides forms pursuant to this section, the person presenting a claim need not use such form if he presents his claim in conformity with Sections 910 and 910.2. ~~If he uses the form provided pursuant to this section and complies substantially with its requirements, he shall be deemed to have complied with Sections 910 and 910.2. A claim presented on a form provided pursuant to this section shall be deemed to be in conformity with Sections 910 and 910.2 if the claim complies substantially with the requirements of the form or with the requirements of Sections 910 and 910.2.~~

Comment. The last sentence in this section as originally enacted has created uncertainty. In some cases, particular claim forms provided by a public entity impose requirements not required by Section 910;

for example, the claim form prescribed by the State Board of Control (2 CAL. ADMIN. CODE §§ 631, 632.5) requires that the claim be verified. Thus, this section might be construed to bar suit where a claimant failed to comply with the requirements of a particular form supplied by the public entity even though he fully complied with the requirements of Sections 910 and 910.2. The amendment makes it clear that a claim presented on an officially prescribed form (such as the State Board of Control form) is sufficient if the information given substantially satisfies the requirements either of Sections 910 and 910.2 or of the form.

SEC. 3. Section 911.4 of said code is amended to read:

911.4. (a) When a claim that is required by Section 911.2 to be presented not later than the 100th day after the accrual of the cause of action is not presented within such time, a written application may be made to the public entity for leave to present such claim.

(b) The application shall be presented to the public entity as provided in Article 2 (commencing with Section 915) of this chapter within a reasonable time not to exceed one year after the accrual of the cause of action and shall state the reason for the delay in presenting the claim. The proposed claim shall be attached to the application.

Comment. The amendment merely divides this section into two subdivisions to facilitate the inclusion of cross-references to subdivision (b) in Section 930.4 (added) and in Section 935 (amended).

SEC. 4. Section 911.6 of said code is amended to read:

911.6. (a) The board shall grant or deny the application within ~~35~~ 45 days after it is presented to the board. If the board does not act upon the application within ~~35~~ 45 days after the application is presented, the application shall be deemed to have been denied on the ~~35th~~ 45th day.

(b) The board shall grant the application where:

(1) The failure to present the claim was through mistake, inadvertence, surprise or excusable neglect and the public entity was not prejudiced by the failure to present the claim within the time specified in Section 911.2; or

(2) The ~~claimant~~ *person required to present the claim* was a minor during all of the time specified in Section 911.2 for the presentation of the claim; or

(3) The ~~claimant~~ *person required to present the claim* was physically or mentally incapacitated during all of the time specified in Section 911.2 for the presentation of the claim and by reason of such disability failed to present a claim during such time; or

(4) The ~~claimant~~ *person required to present the claim* died before the expiration of the time specified in Section 911.2 for the presentation of the claim.

Comment. By extending the time for board action an additional 10 days, the amendment to subdivision (a) makes the time within which

the board may act on an application for leave to present a late claim the same as that within which it may act on a claim or an amended claim. See Section 912.4.

Subdivision (b) has been amended to identify more accurately the person to whom the section refers. By definition, he is not a "claimant" because he has filed no claim.

SEC. 5. Section 912 of said code is repealed.

912. (a) As used in this section, "superior court" means:

(1) In the case of a claim against a local public entity, the superior court of the county in which the local public entity has its principal office.

(2) In the case of a claim against the State, the superior court of any county in which the Attorney General has an office.

(b) The superior court shall grant leave to present a claim after the expiration of the time specified in Section 911.2 if the court finds that the application to the board under Section 911.4 was made within a reasonable time not to exceed one year after the accrual of the cause of action and was denied or deemed denied pursuant to Section 911.6 and that:

(1) The failure to present the claim was through mistake, inadvertence, surprise or excusable neglect unless the public entity against which the claim is made establishes that it would be prejudiced if leave to present the claim were granted; or

(2) The claimant was a minor during all of the time specified in Section 911.2 for the presentation of the claim; or

(3) The claimant was physically or mentally incapacitated during all of the time specified in Section 911.2 for the presentation of the claim and by reason of such disability failed to present a claim during such time; or

(4) The claimant died before the expiration of the time specified in Section 911.2 for the presentation of the claim.

(c) Application to the superior court for leave to present a claim under this section must be made by a petition showing

(1) that application was made to the board under Section 911.4 and was denied or deemed denied and (2) the reason for the failure to present the claim. A copy of the proposed claim shall be attached to the petition. The petition shall be filed within 20 days after the application to the board is denied or deemed denied.

(d) A copy of the petition and the proposed claim and a written notice of the time and place of hearing thereof shall be served (1) on the clerk or secretary or board of the local public entity if the claim is against a local public entity, or (2) on the State Board of Control or its secretary if the claim is against the State, not less than 10 days before the hearing.

(e) The court shall make an independent determination upon the application. The determination shall be made upon the basis of the petition, any affidavits in support of or in opposition to the petition, and any additional evidence received at the hearing on the petition.

Comment. This section is repealed in favor of a new section (Section 946.6) that provides a simplified procedure for seeking judicial relief from the claims presentation procedures in certain cases after the governing board has failed to act favorably on an application made to it for leave to present a late claim. For a discussion of the differences between the existing procedure and the new procedure, see the *Comment* to Section 946.6 (added).

SEC. 6. Section 912.2 of said code is amended to read:

912.2. If an application for leave to present a claim is granted by the board pursuant to Section 911.6, ~~or if a petition for leave to present a claim is granted by the court pursuant to Section 912,~~ the claim shall be deemed to have been presented to the board upon the day that leave to present the claim is granted.

Comment. This amendment merely strikes the reference to the procedure specified in Section 912 because that procedure is superseded by the more simplified procedure set out in Section 946.6 (added).

SEC. 7. Section 912.4 of said code is amended to read:

912.4. (a) The board shall act on a claim in the manner provided in Section 912.6 or 912.8 within 45 days after the claim has been presented. If a claim is amended, the board shall act on the amended claim within 45 days after the amended claim is presented.

(b) The claimant and the board may extend the period within which the board is required to act on the claim by written agreement made:

(1) Before ~~or after~~ the expiration of such period; or

(2) *After the expiration of such period if an action based on the claim has not been commenced and is not yet barred by the period of limitations provided in Section 945.6.*

(c) If the board fails or refuses to act on a claim within the time prescribed by this section, the claim shall be deemed to have been rejected by the board on the last day of the period within which the board was required to act upon the claim. If the period within which the board is required to act is extended by agreement *pursuant to this section*, whether made before or after the expiration of such period, the last day of the period within which the board is required to act shall be the last day of the period specified in such agreement.

Comment. This amendment makes it clear that an agreement extending the board's time to act on a claim must be entered into before an action is commenced or before the action is barred by the applicable statute of limitations (the six-month period allowed by Section 945.6 after rejection of the claim), thus conforming this section to Section 913.2 (which permits previously rejected claims to be reconsidered and settled *before*, but not *after*, they are barred by the applicable statute of limitations).

SEC. 8. Section 915 of said code is amended to read:

915. (a) A claim, any amendment thereto, or an application to the public entity for leave to present a late claim shall be presented to a local public entity by:

(1) Delivering it to the clerk, secretary or auditor thereof;
or

(2) Mailing it to such clerk, secretary or auditor or to the governing body at its principal office.

(b) A claim, any amendment thereto, or an application for leave to file a late claim shall be presented to the state by:

(1) Delivering it to an office of the State Board of Control;
or

(2) Mailing it to the State Board of Control at its principal office.

(c) A claim, amendment or application shall be deemed to have been presented in compliance with this section even though it is not delivered or mailed as provided in this section if it is actually received by the clerk, secretary, auditor or board of the local public entity, or is actually received at an office of the State Board of Control, within the time prescribed for presentation thereof.

(d) A claim, amendment or application shall be deemed to have been presented in compliance with this section to a public agency as defined in Section 53050 if it is delivered or mailed within the time prescribed for presentation thereof in conformity with the information contained in the statement in the Roster of Public Agencies pertaining to that public agency which is on file at the time the claim, amendment or application is delivered or mailed. As used in this subdivision, "statement in the Roster of Public Agencies" means the statement or amended statement in the Roster of Public Agencies in the office of the Secretary of State or in the office of the county clerk of any county in which such statement or amended statement is on file.

Comment. Subdivision (d) of this section is necessary to fill in a gap in the 1963 legislation requiring certain public agencies to file and maintain in a Roster of Public Agencies certain information necessary to facilitate compliance with the claims filing procedure. Section 945.5, (repealed) dispensed with the necessity of presenting a claim to any public agency that had not complied with the Roster requirements. It was silent, however, as to the effect to be given a claim presented in accord with the information filed in the Roster if the information was incomplete, inaccurate or for any other reason deviated from the actual facts. This amendment makes it clear that the presentation of a claim, amendment or application in conformity with the information filed by the public entity in the Roster of Public Agencies constitutes sufficient presentation even if the information does not reflect the actual facts.

SEC. 9. Section 930 of said code is amended to read:

930. The State Board of Control may, by rule, authorize any state agency to include in any written agreement to which

the agency is a party, provisions governing (a) the presentation, by or on behalf of any party thereto, of any or all claims which are required to be presented to the board arising out of or related to the agreement and (b) the consideration and payment of such claims. ~~A claims procedure established by an agreement made pursuant to this section exclusively governs the claims to which it relates, except that Sections 911.4 to 912.2, inclusive, are applicable to all such claims.~~ As used in this section, "state agency" means any office, officer, department, division, bureau, board, commission or agency of the state, claims against which are paid by warrants drawn by the Controller.

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

SEC. 10. Section 930.2 of said code is amended to read:

930.2. The governing body of a local public entity may include in any written agreement to which the entity, its governing body, or any board or employee thereof in an official capacity is a party, provisions governing the presentation, by or on behalf of any party thereto, of any or all claims arising out of or related to the agreement and the consideration and payment of such claims. The written agreement may incorporate by reference claim provisions set forth in a specifically identified ordinance or resolution theretofore adopted by the governing body. ~~A claims procedure established by an agreement made pursuant to this section exclusively governs the claims to which it relates, except that Sections 911.4 to 912.2, inclusive, are applicable to all such claims.~~

Comment. See the *Comment* to Section 930.

SEC. 11. Section 930.4 is added to Chapter 5 (commencing with Section 930) of Part 3 of Division 3.6 of Title 1 of said code, to read:

930.4. A claims procedure established by agreement made pursuant to Section 930 or Section 930.2 exclusively governs the claims to which it relates, except that:

(a) The procedure so prescribed may not require a shorter time for presentation of any claim than 100 days after the accrual of the cause of action to which the claim relates.

(b) The procedure so prescribed may not provide a longer time for the board to take action upon any claim than the time provided in Section 912.4.

(c) The procedure so prescribed may not authorize the consideration, adjustment, settlement, allowance or payment of a claim by any claims board or commission or employee of a local public entity contrary to the provisions of Section 935.2 or

935.4 or by any state agency contrary to the provisions of Section 935.6.

(d) If the procedure so prescribed requires a claim to be presented within a period of less than one year after the accrual of the cause of action and such claim is not presented within the required time, an application may be made to the public entity for leave to present such claim. Subdivision (b) of Section 911.4, Sections 911.6 to 912.2, inclusive, and Section 946.6 are applicable to all such claims, and the time specified in the agreement shall be deemed the "time specified in Section 911.2" within the meaning of Sections 911.6 and 946.6.

Comment. The purpose of this new section is to spell out the limitations on contractual claims procedures and to clarify the application of the late claim procedure to such claims.

In the interest of uniformity of policy and in order to prevent the setting of an excessively short presentation time by a "small print" clause in a contract form prepared by the public entity, the 100-day period specified in Section 911.2 is declared in this section to be a minimum period for contractual claims procedures. Thus, all claimants will know that they always have at least 100 days in which to present a claim whether the claim is governed by the statutory rule of Section 911.2, by the contractual procedures specified in an agreement with a public entity as authorized under Section 930 or 930.2 or by a local ordinance or charter provision adopted pursuant to Section 935.

Similarly, subdivision (b) makes all claims subject to a uniform rule governing the period of time for their consideration and disposition.

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

Subdivision (d) makes explicit how the late claim procedure applies to claims covered by an agreement made pursuant to Section 930 or 930.2.

SEC. 12. Section 930.6 is added to Chapter 5 (commencing with Section 930) of Part 3 of Division 3.6 of Title 1 of said code, to read:

930.6. A claims procedure established by agreement made pursuant to Section 930 or Section 930.2 may include a requirement that a claim be presented and acted upon as a prerequisite to suit thereon. If such requirement is included, any action brought against the public entity on the claim shall be subject to the provisions of Section 945.6 and Section 946.

Comment. This new section makes applicable to claims governed by contractual claims procedures the same six-month statute of limitations (Section 945.6) and the same general rules limiting suit on a claim to that portion of the claim rejected by the board and not waived by the claimant (Section 946) as apply to claims governed by other claims procedures.

SEC. 13. Section 935 of said code is amended to read:

935. (a) Claims against a local public entity for money or damages which are excepted by Section 905 from Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of this part, and which are not governed by any other statutes or regulations expressly relating thereto, shall be governed by the procedure prescribed in any charter, ordinance or regulation adopted by the local public entity.

(b) The procedure so prescribed may include a requirement that a claim be presented and acted upon as a prerequisite to suit thereon; ~~but~~. *If such requirement is included, any action brought against the public entity on the claim shall be subject to the provisions of Section 945.6 and Section 946.*

(c) *The procedure so prescribed may not require a shorter time for presentation of any claim than the time provided in Section 911.2 nor.*

(d) *The procedure so prescribed may not provide a longer time for the board to take action upon any claim than the time provided in Section 912.4; and Sections 911.4 to 912.2, inclusive, are applicable to all claims governed thereby.*

(e) *When a claim required by the procedure to be presented within a period of less than one year after the accrual of the cause of action is not presented within the required time, an application may be made to the public entity for leave to present such claim. Subdivision (b) of Section 911.4, Sections 911.6 to 912.2, inclusive, and Sections 946.4 and 946.6 are applicable to all such claims, and the time specified in the charter, ordinance or regulation shall be deemed the "time specified in Section 911.2" within the meaning of Sections 911.6 and 946.6.*

Comment. The amendment to this section makes applicable to claims procedures prescribed by local charter or ordinance provisions the same basic policies recommended in regard to claims governed by contractual claims procedures. See Sections 930 and 930.2 (amended) and Sections 930.4 and 930.6 (added) and the *Comments* thereto. Taken together, these several sections provide with respect to *all* claims—whether governed by statute, by contract procedures or by local charter or ordinance provisions—that:

- (1) At least 100 days must be allowed in which to present claim.
- (2) The board may not be given more than 45 days after presentation to act on a claim (unless the period for consideration is extended by agreement).
- (3) Where prior presentation and rejection of a claim is required as a prerequisite to commencing a suit, a uniform six-month period of limitations is applicable.
- (4) Where the time for presentation of a claim is less than one year, the late claim procedures are applicable.

SEC. 14. Section 935.2 of said code is amended to read:

935.2. *A charter provision, or a local public entity by ordinance or resolution, may establish a claims board or commis-*

sion of not less than three members to perform such functions of the governing body of the public entity under this part as are prescribed by the local public entity. ~~The local public entity~~ *A charter provision, ordinance or resolution* may provide that, upon the written order of the claims board or ~~commission~~, the auditor or other fiscal officer of the local public entity shall cause a warrant to be drawn upon the treasury of the local public entity in the amount for which a claim has been allowed or compromised or settled.

Comment. As originally drafted, Section 935.2 authorized local public entities to establish claims boards to perform the functions of the governing body in passing on claims and late claim applications, and Section 935.4 authorized local public entities to delegate these functions to claims officers. In the course of consideration by the Legislature, Section 935.4 was amended to refer to "commissions," thus causing the two sections to overlap substantially.

This overlap creates an ambiguity because Section 935.4 contains an express limitation of \$5,000 on the authority to delegate settlement of claims except where a higher figure is authorized by a city or county charter approved by the voters, whereas no such dollar limit is contained in Section 935.2. The amendments to Sections 935.2 and 935.4 eliminate this ambiguity.

SEC. 15. Section 935.4 of said code is amended to read:

935.4. A charter provision, or a local public entity by ordinance or resolution, may authorize an employee ~~or commission~~ of the local public entity to perform such functions of the governing body of the public entity under this part as are prescribed by the local public entity, but *only a charter provision* may ~~not~~ authorize such employee ~~or commission~~ to allow, compromise or settle a claim against the local public entity if the amount to be paid pursuant to such allowance, compromise or settlement exceeds five thousand dollars (\$5,000); ~~except that a charter provision may authorize a public employee or commission to allow, compromise or settle a claim, even where the amount to be paid exceeds five thousand dollars (\$5,000).~~ *A charter provision, ordinance or resolution may provide that, upon the written order of such employee or commission, the auditor or other fiscal officer of the local public entity shall cause a warrant to be issued upon the treasury of the local public entity in the amount for which a claim has been allowed, compromised or settled.*

Comment. See the *Comment* to Section 935.2 regarding the deletion of the reference to "commission" in this section. The remaining changes simply clarify the section.

SEC. 16. Section 943 of said code is amended to read:

943. This part does not apply to claims or actions against the Regents of the University of California *nor to claims or actions against an employee or former employee of the Regents*

of the University of California arising out of such employment.

Comment. The reference to "this part" includes the procedural provisions governing actions against public employees as well as actions against public entities. As enacted, this section only declared the provisions in question inapplicable to claims or actions against the university itself, thereby leaving in doubt the applicability (or inapplicability) of the provisions to claims and actions against university employees. The amendment eliminates this ambiguity.

SEC. 17. Section 945.4 of said code is amended to read:

945.4. *Except as provided in Sections 946.4 and 946.6*, no suit for money or damages may be brought against a public entity on a cause of action for which a claim is required to be presented in accordance with Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of this division until a written claim therefor has been presented to the public entity and has been acted upon by the board, or has been deemed to have been rejected by the board, in accordance with Chapters 1 and 2 of Part 3 of this division.

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

SEC. 18. Section 945.5 of said code is repealed.

~~945.5. Where provision is made by law or otherwise that no suit may be brought against any public agency as defined in Section 5350 unless and until a claim is presented to such agency, or an employee thereof, and such agency has failed to file with the Secretary of State and with the county clerk of each county in which there is located any portion of the territory of such public agency the information required to be filed under Section 53051, then and in such event the presentation of any such claim shall not be required.~~

Comment. Section 945.5 is replaced by Section 946.4, by a new subdivision added to Section 915 and by the detailed provisions of Sections 960-960.8. See the *Comments* to the cited sections.

SEC. 19. Section 945.6 of said code is amended to read:

945.6. (a) Except as provided in *Sections 946.4 and 946.6 and subject to subdivision (b) of this section*, any suit brought against a public entity on a cause of action for which a claim is required to be presented in accordance with Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of this division must be commenced within six months after the date the claim is acted upon by the board, or is deemed to have been rejected by the board, in accordance with Chapters 1 and 2 of Part 3 of this division.

(b) When a person is unable to commence a suit on a cause of action described in subdivision (a) within the time prescribed in that subdivision because he has been sentenced to imprisonment in a state prison, ~~such suit must be commenced within the time limited for the commencement of such suit is extended to six months after the date that the civil right to commence such action is restored to such person, except that the time shall not be extended if the public entity establishes that the plaintiff failed to make a reasonable effort to commence the suit, or to obtain a restoration of his civil right to do so, before the expiration of the time prescribed in subdivision (a).~~

(c) A person sentenced to imprisonment in a state prison may not commence ~~such a suit on a cause of action described in subdivision (a)~~ unless he presented a claim in accordance with Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of this division ~~within the time prescribed therein.~~

Comment. Although the imposition of a sentence to imprisonment in a state prison constitutes the operative fact making effective a loss of civil rights (see PENAL CODE § 2600), this section as enacted provided no standards for determining when failure to sue within a six-month period could be said to be "because" of the imposition of the sentence. The amendment clarifies this causal relationship by defining it in terms of whether the claimant had made a reasonable effort to commence the action (*e.g.*, prior to sentence) or to obtain a restoration of his civil right to do so. (Penal Code Sections 2600, 2601 and 3054 authorize a prisoner to apply for a limited restoration of civil rights.)

The amendment to subdivision (a) directs attention to the exceptions to Section 945.6 that are stated in Sections 946.4 and 946.6 (added). See the *Comments* to the cited sections.

The last sentence has been recast as a new subdivision with appropriate rewording in the interest of clarity. Elimination of the last five words in the original sentence precludes a contention that the late claim procedures do not apply to prisoners' claims.

SEC. 20. Section 945.8 of said code is amended to read:

945.8. Except where a different statute of limitations is specifically applicable to the public entity, *and except as provided in Sections 930.6 and 935*, any action against a public entity upon a cause of action for which a claim is not required to be presented in accordance with Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of this division must be commenced within the time prescribed by the statute of limitations that would be applicable if the action were brought against a defendant other than a public entity.

Comment. This amendment conforms Section 945.8 to the proposal, incorporated in the language of new Section 930.6 (applicable to claims procedures established by agreement) and amended Section 935 (ap-

plicable to claims procedures established by local charter or ordinance), that the maximum period of limitations for commencement of an action on a rejected claim should be uniformly set at six months (except for plaintiffs without civil rights).

SEC. 21. Section 946.4 is added to said code, to read:

946.4. (a) Where provision is made by or pursuant to law that no suit may be brought against a public agency as defined in Section 53050 unless and until a claim is presented to the agency, the failure to present a claim does not constitute a bar or defense to the maintenance of a suit against such public agency if, during the 70 days immediately following the accrual of the cause of action:

(1) No statement pertaining to the public agency is on file, or is placed on file, in the Roster of Public Agencies in the office of the Secretary of State and of the county clerk of each county in which the public agency then maintains an office, as required by Section 53051; or

(2) A statement or amended statement pertaining to the public agency is on file, or is placed on file, in the Roster of Public Agencies in the office of the Secretary of State and of the county clerk of each county in which the public agency then maintains an office, but the information contained therein is so inaccurate or incomplete that it does not substantially conform to the requirements of Section 53051.

(b) On any question of fact arising within the scope of paragraphs (1) and (2) of subdivision (a), the burden of proof is upon the public agency.

(c) This section is inapplicable where the presentation of a claim is required by a claims procedure established by agreement made pursuant to Section 930.2 unless the procedure so prescribed requires that the claim be presented to the governing body of the public agency or to a person listed in Section 53051.

Comment. This section replaces present Section 945.5, enacted in 1963 as a part of a State Bar legislative program. Section 945.5 is unclear as to when the public agency's failure to have its statement on file in the Roster of Public Agencies is critical: when the cause of action accrued, when an effort to present a claim was undertaken, when the action was commenced or at some other time? The amendment makes it clear that the Roster requirement is satisfied if the agency is in compliance not later than 70 days after the cause of action accrues. By checking the Roster at the end of 70 days, a person can determine whether he must present a claim within the remaining 30-day or 295-day period (depending on the kind of claim asserted) available for that purpose. If the agency is not then listed, he need not file a claim. The public agency cannot thereafter file the required statement—perhaps on the last day for presentation of the claim or of an application for leave to present a late claim—and then contend that nonpresentation bars suit. Seventy days gives the public agency a reasonable time within which to comply with the Roster procedure. On the other hand,

compliance within 70 days would not unduly prejudice the claimant and should be permitted to cure any earlier default on the part of the agency. The same considerations that govern the failure of a public agency to have a statement on file in the Roster of Public Agencies apply with equal force in a case where the information supplied by the agency is not in substantial compliance with the Roster requirements.

Because an agency required to comply with the Roster procedure is in a better position than a claimant to know the facts concerning its duty under the Roster procedure, subdivision (b) places the burden of proof on questions arising under subdivision (a) on the agency.

Subdivision (c) makes this section inapplicable to local claims procedures established by agreement unless the procedure requires a claim to be presented to the same persons required to be listed in the Roster. Moreover, the very purpose of the contract procedure may be to require the filing of claims with persons other than those named in the Roster of Public Agencies legislation. In these cases, a claimant normally will have prior notice as to the applicable claims procedure by reason of the agreement.

SEC. 22. Section 946.6 is added to said code, to read:

946.6. (a) Where an application for leave to present a claim is denied or deemed to be denied pursuant to Section 911.6, a petition may be made to the court for an order relieving the petitioner from the provisions of Section 945.4. The proper court for filing the petition is a court of competent jurisdiction in which a suit on the cause of action to which the claim relates could be brought.

(b) The petition must show (1) that application was made to the board under Section 911.4 and was denied or deemed denied, (2) the reason for failure to present the claim within the time limit specified in Section 911.2 and (3) the information required by Section 910. The petition shall be filed within six months after the application to the board is denied or deemed to be denied pursuant to Section 911.6.

(c) The court shall relieve the petitioner from the provisions of Section 945.4 if the court finds that the application to the board under Section 911.4 was made within a reasonable time not to exceed one year after the accrual of the cause of action and was denied or deemed denied pursuant to Section 911.6 and that:

(1) The failure to present the claim was through mistake, inadvertence, surprise or excusable neglect unless the public entity establishes that it would be prejudiced if the court relieves the petitioner from the provisions of Section 945.4; or

(2) The person required to present the claim was a minor during all of the time specified in Section 911.2 for the presentation of the claim; or

(3) The person required to present the claim was physically or mentally incapacitated during all of the time specified in Section 911.2 for the presentation of the claim and by reason of such disability failed to present a claim during such time; or

(4) The person required to present the claim died before the expiration of the time specified in Section 911.2 for the presentation of the claim.

(d) A copy of the petition and a written notice of the time and place of hearing thereof shall be served not less than 10 days before the hearing on (1) the clerk or secretary or board of the local public entity, if the respondent is a local public entity, or (2) the State Board of Control or its secretary, if the respondent is the state.

(e) The court shall make an independent determination upon the petition. The determination shall be made upon the basis of the petition, any affidavits in support of or in opposition to the petition, and any additional evidence received at the hearing on the petition.

(f) If the court makes an order relieving the petitioner from the provisions of Section 945.4, suit on the cause of action to which the claim relates must be filed in such court within 30 days thereafter.

Comment. Section 946.6 establishes a new procedure for obtaining a judicial determination of the issue following a public entity's rejection of an application for leave to present a late claim. Under the original procedure enacted in 1963, a claimant was required to file (within 20 days after the application for leave to present a late claim was denied or deemed denied pursuant to Section 911.6) a petition in court for leave to present a late claim to the public entity. See Section 912 (repealed). As to claims against the State, venue for such a petition lay only in those counties in which the Attorney General maintains an office (Sacramento, San Francisco and Los Angeles). This time for filing was too short and the State venue provisions were inconvenient both for claimants and the State.

Another defect in the original procedure is that it required a successful petitioner to present his late claim to the entity, to be acted upon in the ordinary way. Any benefit to be gained from so proceeding appears to be outweighed by the delay involved.

Accordingly, the Commission recommends that the petition to a court, following the presentation and rejection of an application to the public entity to present a late claim, be a petition for relief from having to present any claim at all instead of one for leave to present a late claim. The State venue problem is eliminated by providing that the proper court for hearing the petition is a court of competent jurisdiction in which a suit on the cause of action to which the claim relates could be brought. The petition may be filed within six months after the application for leave to present a late claim is denied or deemed to be denied, the same period of time specified in Section 945.6 for commencing legal action on a claim that has been denied or deemed denied on the merits.

The notice required to be given, the matters required to be shown in the petition, the basis of the determination and the grounds upon which relief may be granted remain the same as under existing law.

Subdivision (f) provides a special period of limitations on actions that can be commenced only after relief from the claims presentation requirements is granted pursuant to the provisions of this section.

SEC. 23. Section 950.2 of said code is amended to read :

950.2. Except as provided in Section 950.4, a cause of action against a public employee or former public employee for injury resulting from an act or omission in the scope of his employment as a public employee is barred if an action against the employing public entity for such injury is barred under Section 946 or is barred because of the failure (a) to present a written claim to the public entity or (b) to commence the action within the time specified in Section 945.6 Part 3 (commencing with Section 900) of this division or under Chapter 2 (commencing with Section 945) of Part 4 of this division. This section is applicable even though the public entity is immune from liability for the injury.

Comment. This amendment makes it clear that suit against a public employee or former employee is barred when a suit against the entity is barred (1) by failure to present any claim at all or (2) by presenting a claim that is insufficient, too late or for any other reason inadequate to support an action against the employing public entity. (The blanket reference to Part 3 makes the rule stated in this section applicable as well to contractual claims procedures (see Section 930 *et seq.*) and local ordinance or charter claims procedures (see Section 935).) Likewise, if suit against a public entity is barred by the applicable statute of limitations or by any other provision in Chapter 2 of Part 4 dealing with actions against public entities, suit against the public employee or former employee is also barred.

The addition of the last sentence to this section eliminates an existing ambiguity by providing that the presentation of a claim to the employing public entity is a prerequisite to suit against an employee notwithstanding the fact that the applicable substantive law may declare the entity to be immune from liability for the injury. Because the employing public entity is financially responsible for judgments against its employees (see Section 825), the presentation of a claim is required in all cases.

SEC. 24. Section 950.4 of said code is amended to read :

950.4. A cause of action against a public employee or former public employee is not barred by Section 950.2 if the plaintiff pleads and proves that he did not know or have reason to know, within the period prescribed for the presentation of a claim to the employing public entity as a condition to maintaining an action for such injury against the employing public entity, *as that period is prescribed by Section 911.2 or by such other claims procedure as may be applicable*, that the injury was caused by an act or omission of the public entity or *by an act or omission of an employee thereof of the public entity in the scope of his employment as a public employee*.

Comment. This amendment makes it clear that "the period for the presentation of a claim" refers to the original claim presentation period only and does not include the period within which a late claim application could be submitted.

The addition of the last clause is intended to forestall the possibility of any contention that a claim is required to be presented whenever the defendant is a public employee without regard to whether or not he was acting in the scope of his employment when the act or omission resulting in the injury occurred.

SEC. 25. Section 950.6 of said code is amended to read:

950.6. When a written claim for money or damages for injury has been presented to the employing public entity:

(a) A cause of action for such injury may not be maintained against the public employee or former public employee whose act or omission caused such injury until the claim has been rejected, or has been deemed to have been rejected, in whole or in part by the public entity.

(b) A suit against the public employee or former public employee for such injury must be commenced within six months after the date the claim is acted upon by the board, or is deemed to have been rejected by the board, in accordance with Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of this division ~~or, where~~.

(c) *When a person is unable to commence the suit within such the time prescribed in subdivision (b) because he has been sentenced to imprisonment in a state prison, such suit must be commenced within the time limited for the commencement of such suit is extended to six months after the date that the civil right to commence such action is restored to such person, except that the time shall not be extended if the public employee or former public employee establishes that the plaintiff failed to make a reasonable effort to commence the suit, or to obtain a restoration of his civil right to do so, before the expiration of the time prescribed in subdivision (b).*

Comment. This amendment to Section 950.6 conforms the present section to the amended version of Section 945.6.

SEC. 26. Section 960.2 of said code is repealed.

960.2. In any suit against a public agency, if the governing body of any public agency fails to comply with Section 53051, notwithstanding any provision of law to the contrary, or if the governing body cannot with due diligence be found at the last known official mailing address of the governing body of the public agency, and it is shown by affidavit to the satisfaction of the court or judge that personal service of process against a public agency cannot be made with the exercise of due diligence, the court or judge may make an order that the service be made upon the public agency by delivery by hand to the Secretary of State or to any person employed in his office in the capacity of an assistant or deputy, employed in his office in the capacity of an assistant or deputy, of two copies of the process for each defendant to be served, together with two copies of the order authorizing such service. Service

~~in this manner constitutes personal service upon the public agency.~~

~~A fee of five dollars (\$5) shall be paid by the plaintiff to the Secretary of State for each public agency on which service is made in this manner.~~

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

SEC. 27. Section 960.2 is added to said code, to read:

960.2. Notwithstanding any provision of law to the contrary, service of process in an action or proceeding against a public agency may be made in the manner provided in Section 960.3 if, during the 10 days immediately following the commencement of the action or proceeding:

(a) No statement pertaining to the public agency is on file, or is placed on file, in the Roster of Public Agencies in the office of the Secretary of State and of the county clerk of each county in which the public agency then maintains an office, as required by Section 53051; or

(b) A statement or amended statement pertaining to the public agency is on file, or is placed on file, in the Roster of Public Agencies in the office of the Secretary of State and of the county clerk of each county in which the public agency then maintains an office, but the information contained therein is so inaccurate or incomplete that it does not substantially conform to the requirements of Section 53051; or

(c) A statement or amended statement pertaining to the public agency is on file, or is placed on file, in the Roster of Public Agencies in the office of the Secretary of State and of the county clerk of each county in which the public agency then maintains an office, but neither the governing body nor any officer or agent of the public agency upon whom personal service of process constitutes service upon the public agency can thereafter, with due diligence, be personally served at the address or addresses set forth in the statement.

Comment. This new section defines the circumstances in which substituted service on the Secretary of State is permitted and clarifies several matters dealt with in former Section 960.2.

Failure to comply with Section 53051 is defined in the new section as either the absence of a statement in the Roster of Public Agencies or the presence in the Roster of a statement that is not in substantial compliance with the requirements of Section 53051.

As enacted, Section 960.2 (repealed) authorized substituted service if the governing board could not be found at the last known "official mailing address" of the entity and if service could not be effected with due diligence. Except as reflected in subdivision (c), this basis for substituted service has been omitted in the new section. Under both the repealed and the new section, no showing of diligence was or is required if no statement is in the Roster; on the other hand, if a statement is on file, all that would appear to be necessary to establish diligence is a good faith effort to accomplish service at the addresses set forth in

the statement. In any event, a court order must be obtained under new Section 960.3 as under former Section 960.2.

SEC. 28. Section 960.3 is added to said code, to read:

960.3. (a) If it is shown by affidavit to the satisfaction of the court or judge that the circumstances required by Section 960.2 exist, the court or judge may make an order that service of process be made upon the public agency as provided in this section.

(b) Service of process shall be made by:

(1) Leaving two copies of the process for each public agency defendant to be served, together with two copies of the order authorizing such service, in the hands of the Secretary of State or in his office at Sacramento; or

(2) Mailing two copies of the process for each public agency defendant to be served, together with two copies of the order authorizing such service, to the office of the Secretary of State in Sacramento by certified or registered mail, addressee only, return receipt requested. Service shall be effective as of the day the return receipt is received from the office of the Secretary of State.

(c) Service in this manner constitutes personal service upon the public agency.

(d) A fee of five dollars (\$5) shall be paid by the plaintiff to the Secretary of State for each public agency on which service is made in this manner.

Comment. This section is new. It is an adaption of part of former Section 960.2 which has been recast as two separate sections in the present proposal. See new Section 960.2 and the *Comment* thereto. The means by which service may be made by delivery to the Secretary of State are similar to the means for substituted service provided in Vehicle Code Section 17454.

SEC. 29. Section 960.4 of said code is amended to read:

960.4. Upon receipt of the copies of process pursuant to Section ~~960.2~~ 960.3, the Secretary of State shall give notice of the service of the process to the governing body of the public agency at its principal office in this state, by forwarding to such office, by registered mail with request for return receipt, a copy of the process. If the only address disclosed by the records of the Secretary of State of the principal office of the governing body of the public agency is the county in which it is situated, then the process shall be mailed to the county seat, addressed to the public agency in care of the county clerk, or it may be mailed to any address for the public agency specified in the court order. If the process is mailed in care of the county clerk, the county clerk shall promptly send it to the public agency at its address within the county, if known to him, and if unknown shall cause the process to be posted at the courthouse of the county for 30 days. If the records of the Secretary of State disclose no address for the public agency,

then the Secretary of State shall mail a copy of the process to the county clerk of either (a) the county in which the transaction or occurrence took place, or (b) the county where real property of the agency is situated, and the county clerk shall promptly send the process to the public agency at its address within the county, if known to him, or if unknown shall cause the process to be posted at the courthouse of the county for 30 days.

Upon receipt of such copies of process, the Secretary of State shall immediately forward to the Attorney General a copy of all papers served upon him. The Attorney General, upon receipt of any such process, may locate the responsible officers of the public agency involved, and the governing body of such public agency may relieve the Attorney General of any further responsibility hereunder, and may designate any other attorneys to defend said action or take such other action as they may determine.

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

SEC. 30. Section 960.8 is added to Chapter 5 (commencing with Section 960) of Part 4 of Division 3.6 of Title 1 of said code, to read:

960.8. Service of process in an action or proceeding against a public agency may be made in conformity with the information contained in the statement in the Roster of Public Agencies pertaining to that public agency which is on file at the time of such service. Service in this manner, if otherwise made in compliance with law, constitutes personal service upon the public agency.

As used in this section, "statement in the Roster of Public Agencies" means the statement or amended statement in the Roster of Public Agencies in the office of the Secretary of State or in the office of the county clerk of any county in which such statement or amended statement is on file.

Comment. The addition of Section 960.8 completes the disposition of matters covered in former Section 960.2 by providing that service of process in accord with the information contained in the Roster of Public Agencies constitutes sufficient service on the public entity. As enacted, Section 960.2 (repealed) was silent as to the effect to be given service of process in accord with the information filed in the Roster.

SEC. 31. Section 53050 of said code is amended to read:

53050. The term "public agency," as used in this article, means ~~any political subdivision of the State, a district of any kind or class, public authority of any kind or class, public agency, and any other political subdivision or public corporation in the state, other than~~ but does not include the state or a county, city and county, or city; ~~or town~~.

Comment. This amendment, which makes no substantive change, merely adopts language taken from Section 811.2 (defining "public entity").

SEC. 32. Section 53051 of said code is amended to read:

53051. (a) Within ~~ninety (90)~~ *seventy (70)* days after the effective date of this article or after the date of commencement of its legal existence, ~~whichever is later,~~ the governing body of each public agency shall file with the Secretary of State and also with the county clerk of each county in which ~~there is located any portion of the territory of the public agency maintains an office~~, a statement of the following facts:

1. The full, legal name of the public agency.
2. The official mailing address of the governing body of the public agency.

3. The ~~names~~ *name* and *residence or business addresses* ~~address~~ of each member of the governing body of the public agency.

4. The name, *title*, and if different from the information required in ~~paragraph 3,~~ *the residence or business address* of the chairman, president, or other presiding officer, ~~and clerk,~~ *and* or secretary of the governing body of such public agency.

(b) Within 10 days after any change in the facts required to be stated pursuant to subdivision (a), ~~a~~ *an amended statement of such change containing the information required by subdivision (a)* shall be filed as provided therein.

(c) *It shall be the duty of the Secretary of State and of the county clerk of each county to establish and maintain an indexed "Roster of Public Agencies," to be so designated, which shall contain all information filed as required in subdivisions (a) and (b), which roster is hereby declared to be a public record.*

Comment. These amendments to Section 53051 are self-explanatory. Proposals of the State Bar Committee on Administration of Justice, as recorded in 39 CAL. S.B.J. 513-514 (1964) (i.e., "maintains an office"), are incorporated; other minor changes in wording, consistent with Sections 946.4 and 960.2 (added), are made in the interest of clarity. The change from 90 days to 70 days makes the time for performance under this section consistent with the time specified in Section 946.4 (added).

Subdivision (c) merely restates the matters stated in Section 53052 (repealed).

SEC. 33. Section 53052 of said code is repealed.

~~53052. It shall be the duty of the Secretary of State and of the county clerk of each county to establish and maintain an indexed "Roster of Public Agencies," to be so designated, which shall contain all information filed as required in Section 53051, which roster is hereby declared to be a public record.~~

Comment. See the *Comment* to Section 53051 (amended).

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