

STATE OF CALIFORNIA

# **CALIFORNIA LAW REVISION COMMISSION**

RECOMMENDATION

## **Statutory Cross-References to “Tort Claims Act”**

June 2011

California Law Revision Commission  
4000 Middlefield Road, Room D-2  
Palo Alto, CA 94303-4739  
[www.clrc.ca.gov](http://www.clrc.ca.gov)

#### NOTE

This report includes an explanatory Comment to each section of the recommended legislation. The Comments are written as if the legislation were already operative, since their primary purpose is to explain the law as it will exist to those who will have occasion to use it after it is operative. The Comments are legislative history and are entitled to substantial weight in construing the statutory provisions. For a discussion of cases addressing the use of Law Revision Commission materials in ascertaining legislative intent, see the Commission’s most recent *Annual Report*.

Cite this report as *Statutory Cross-References to “Tort Claims Act,”* 41 Cal. L. Revision Comm’n Reports 285 (2011).

STATE OF CALIFORNIA

---

CALIFORNIA LAW REVISION COMMISSION

4000 Middlefield Road, Room D-2  
Palo Alto, CA 94303-4739  
650-494-1335

ASSOCIATE JUSTICE JOHN ZEBROWSKI (RET.), Chairperson  
STEPHEN MURPHY, Vice-Chairperson  
DIANE F. BOYER-VINE  
DAMIAN CAPOZZOLA  
SENATOR ELLEN CORBETT  
MARK DUNDEE  
SIDNEY GREATHOUSE  
PAMELA L. HEMMINGER  
SUSAN DUNCAN LEE

June 9, 2011

To: The Honorable Edmund G. Brown, Jr.  
*Governor of California*, and  
The Legislature of California

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

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

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

This recommendation was prepared pursuant to Government Code Section 8298.

Respectfully submitted,

Associate Justice  
John Zebrowski (Ret.)  
*Chairperson*

## STATUTORY CROSS-REFERENCES TO “TORT CLAIMS ACT”

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

### **Historical Background**

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

In 1961, the California Supreme Court decided two cases that would ultimately serve as the driving impetus for reform in this area of law.<sup>3</sup> In *Muskopf*, the Court made public entities civilly liable for the torts of their agents by suspending their sovereign immunity, while in *Lipman*, the Court held that discretionary immunity, which protects public employees, would not necessarily extend to the employing public entity. In response, the Legislature

---

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

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

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

decided to temporarily suspend the *Muskopf* and *Lipman* decisions while assigning the Commission the task of developing a comprehensive statute on governmental liability and immunity. The Commission’s efforts ultimately resulted in the passage of Division 3.6 by the Legislature.

### Usage of “Tort Claims Act” and “Government Claims Act”

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

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

Consequently, the California Supreme Court recently adopted the practice of referring to Division 3.6 as the “Government Claims Act,” so as to “avoid the confusion” created by the

---

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

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

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

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

informal short title “Tort Claims Act.”<sup>8</sup> The Court explained that “Government Claims Act” is “an appropriately inclusive term and an apt short version” of the title given by the 1963 Legislature: “Claims and Actions Against Public Entities and Public Employees.”<sup>9</sup>

### Revising the Codes to Eliminate Confusion

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

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

---

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

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

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

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



## PROPOSED LEGISLATION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

defense costs reasonably and necessarily incurred by the party or parties opposing the proceeding, and the court shall render judgment in favor of that party in the amount of all reasonable and necessary defense costs, in addition to those costs normally awarded to the prevailing party. An award of defense costs under this section shall not be made except on notice contained in a party’s papers and an opportunity to be heard.

(b) “Defense costs,” as used in this section, shall include reasonable attorneys’ fees, expert witness fees, the expense of services of experts, advisers, and consultants in defense of the proceeding, and where reasonably and necessarily incurred in defending the proceeding.

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

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

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

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

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

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

(1) A closed session with its negotiator prior to the purchase, sale, exchange, or lease of real property by or for the student body

organization to grant authority to its negotiator regarding the price and terms of payment for the purchase, sale, exchange, or lease. Prior to the closed session, the legislative body shall hold an open and public session in which it identifies its negotiators, the real property or real properties that the negotiations may concern, and the person or persons with whom its negotiators may negotiate.

(2) For purposes of this subdivision:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(E) A statement threatening litigation made by a person outside an open and public meeting on a specific matter within the responsibility of the legislative body, so long as the official or employee of the student body organization receiving knowledge of the threat makes a contemporaneous or other record of the statement prior to the meeting. The records so created need not identify the alleged victim of unlawful or tortious sexual conduct or anyone making the threat on their behalf, or identify a public employee who is the alleged perpetrator of any unlawful or tortious conduct upon which a threat of litigation is based, unless the identity of the person has been publicly disclosed.

(6) Nothing in this section shall require disclosure of written communications that are privileged and not subject to disclosure pursuant to the California Public Records Act (Chapter 3.5

(commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

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

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

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

(2) As a condition to holding a closed session on specific complaints or charges brought against an employee by another person or employee, the employee shall be given written notice of his or her right to have the complaints or charges heard in an open session rather than a closed session, which notice shall be

delivered to the employee personally or by mail at least 24 hours before the time for holding the session. If notice is not given, any disciplinary or other action taken by the legislative body against the employee based on the specific complaints or charges in the closed session shall be null and void.

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

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

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

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

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

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

(B) Approval given to its legal counsel to defend, or seek or refrain from seeking appellate review or relief, or to enter as an amicus curiae in any form of litigation, as the result of a consultation under subdivision (b) shall be reported in open session at the public meeting during which the closed session is held. The

report shall identify, if known, the adverse party or parties and the substance of the litigation. In the case of approval given to initiate or intervene in an action, the announcement need not identify the action, the defendants, or other particulars, but shall specify that the direction to initiate or intervene in an action has been given and that the action, the defendants, and the other particulars shall, once formally commenced, be disclosed to any person upon inquiry, unless to do so would jeopardize the ability of the student body organization to effectuate service of process on one or more unserved parties, or that to do so would jeopardize its ability to conclude existing settlement negotiations to its advantage.

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

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

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

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

(E) Approval of an agreement concluding labor negotiations with represented employees pursuant to subdivision (e) shall be reported after the agreement is final and has been accepted or

ratified by the other party. The report shall identify the item approved and the other party or parties to the negotiation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) Notwithstanding paragraph (3) of subdivision ~~(e)~~ (b) of Section 905.2 of the Government Code or any other provision of law, the trustees may pay any claim for money or damages on express contract or for an injury for which the trustees or their officers or employees are liable, without approval of the California Victim Compensation and Government Claims Board if the trustees determine that payment of the claim is in the best interests

of the California State University and that funds are available to pay the claim. The authority of the trustees conferred by this subdivision does not alter any other requirements governing claims in the ~~For~~ Government Claims Act (Division 3.6 (commencing with Section 810) of Title 1 of the Government Code), except to grant the trustees authority to pay these claims.

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

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

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

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

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

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

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

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

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

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

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

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

**LICENSE/PERMIT DETERMINATION**

Applicant(s): (Specify number of applicants)

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

**CONFERENCE WITH REAL PROPERTY NEGOTIATORS**

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

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

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

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

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

### CONFERENCE WITH LEGAL COUNSEL — EXISTING LITIGATION

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

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

or

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

### CONFERENCE WITH LEGAL COUNSEL — ANTICIPATED LITIGATION

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

(In addition to the information noticed above, the agency may be required to provide additional information on the agenda or in an oral statement prior to the closed session pursuant to ~~subparagraphs (B) to (E)~~ paragraphs (2) to (5), inclusive, of ~~paragraph (3)~~ of subdivision ~~(b)~~ (e) of Section 54956.9.)

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

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

#### LIABILITY CLAIMS

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

Agency claimed against: (Specify name)

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

#### THREAT TO PUBLIC SERVICES OR FACILITIES

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

#### PUBLIC EMPLOYEE APPOINTMENT

Title: (Specify description of position to be filled)

#### PUBLIC EMPLOYMENT

Title: (Specify description of position to be filled)

**PUBLIC EMPLOYEE PERFORMANCE EVALUATION**

Title: (Specify position title of employee being reviewed)

**PUBLIC EMPLOYEE DISCIPLINE/DISMISSAL/RELEASE**

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

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

**CONFERENCE WITH LABOR NEGOTIATORS**

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

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

or

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

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

**CASE REVIEW/PLANNING**

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

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

**REPORT INVOLVING TRADE SECRET**

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

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

**HEARINGS**

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

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

**CHARGE OR COMPLAINT INVOLVING INFORMATION PROTECTED BY FEDERAL LAW**

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

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

**CONFERENCE INVOLVING A JOINT POWERS AGENCY (Specify by name)**

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

Name of local agency representative on joint powers agency board:

(Specify name)

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

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

**AUDIT BY BUREAU OF STATE AUDITS**

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

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

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

54956.9. (a) Nothing in this chapter shall be construed to prevent a legislative body of a local agency, based on advice of its legal counsel, from holding a closed session to confer with, or receive advice from, its legal counsel regarding pending litigation when

discussion in open session concerning those matters would prejudice the position of the local agency in the litigation.

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

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

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

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

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

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

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

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

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

~~(B)~~ (2) Facts and circumstances, including, but not limited to, an accident, disaster, incident, or transactional occurrence that might result in litigation against the agency and that are known to a

potential plaintiff or plaintiffs, which facts or circumstances shall be publicly stated on the agenda or announced.

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

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

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

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

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

(g) Prior to holding a closed session pursuant to this section, the legislative body of the local agency shall state on the agenda or publicly announce the ~~subdivision of this section~~ paragraph of subdivision (d) that authorizes the closed session. If the session is closed pursuant to paragraph (1) of subdivision ~~(a)~~ (d), the body shall state the title of or otherwise specifically identify the litigation to be discussed, unless the body states that to do so

would jeopardize the agency’s ability to effectuate service of process upon one or more unserved parties, or that to do so would jeopardize its ability to conclude existing settlement negotiations to its advantage.

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

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

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

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

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

28245. Whenever the Department of Justice acts pursuant to this article as it pertains to firearms other than handguns, the department’s acts or omissions shall be deemed to be discretionary within the meaning of the ~~California Tort Claims Act~~ Government Claims Act pursuant to Division 3.6 (commencing with Section 810) of Title 1 of the Government Code.

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

---