

AMENDED IN SENATE JUNE 29, 2002
AMENDED IN ASSEMBLY APRIL 22, 2002
AMENDED IN ASSEMBLY APRIL 16, 2002

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 2321

Introduced by Assembly Member Hertzberg

February 21, 2002

An act to amend Sections 900.2, 912.4, 912.8, 913, 915, 935.6, 940.2, 946.6, 948, 955.4, 965, 965.2, 965.6, and 965.65 of, and to add Sections 900.3, 912.7, 935.8, 940.3, 948.1, and 955.9 to, the Government Code, relating to public entity liability.

LEGISLATIVE COUNSEL'S DIGEST

AB 2321, as amended, Hertzberg. Tort Claims Act: judiciary.

The existing Tort Claims Act provides for the liability and immunity of a governmental entity for its acts or omissions that cause harm to persons. Existing law provides that any claim for money or damages against the state is required to be presented to the State Board of Control within a specified period of time. Other provisions of existing law have renamed the State Board of Control, the Victim Compensation and Government Claims Board.

This bill would require, instead, in the case of a claim against a judicial branch entity, as defined, or a judge of one of those entities, that the Judicial Council act on the claim in accordance with the procedure that the Judicial Council would provide by rule of court. The bill would specify certain means of presentation and service of a claim against a judicial branch entity or one of its judges. The bill would authorize the

Judicial Council to settle, adjust, or compromise any pending action arising out of the activities of a judicial branch entity or judge thereof, and to authorize the Controller to draw a warrant for payment of any final judgment or settlement based on claims arising out of the activities of a judicial branch entity. *The bill would also require the Administrative Director of the Courts to report to the Judicial Council concerning any action the administrative office of the courts takes or proposes to take to prevent the future occurrence of circumstances similar to those upon which the claim was based.*

This bill would also amend the references to the State Board of Control in the Tort Claims Act to instead refer to the Victim Compensation and Government Claims Board.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

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

- 1 SECTION 1. Section 900.2 of the Government Code is
- 2 amended to read:
- 3 900.2. “Board” means:
- 4 (a) In the case of a local public entity, the governing body of the
- 5 local public entity.
- 6 (b) In the case of the state, except as provided by subdivision
- 7 (c), the Victim Compensation and Government Claims Board.
- 8 (c) In the case of a judicial branch entity or judge of one of those
- 9 entities, the Judicial Council.
- 10 SEC. 2. Section 900.3 is added to the Government Code, to
- 11 read:
- 12 900.3. A “judicial branch entity” is a public entity and means
- 13 any superior court, court of appeals, the Supreme Court, the
- 14 Judicial Council, or the Administrative Office of the Courts.
- 15 SEC. 3. Section 912.4 of the Government Code is amended to
- 16 read:
- 17 912.4. (a) The board shall act on a claim in the manner
- 18 provided in Section 912.6, 912.7, or 912.8 within 45 days after the
- 19 claim has been presented. If a claim is amended, the board shall act
- 20 on the amended claim within 45 days after the amended claim is
- 21 presented.



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

4 (1) Before the expiration of the period.

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

8 (c) If the board fails or refuses to act on a claim within the time
9 prescribed by this section, the claim shall be deemed to have been
10 rejected by the board on the last day of the period within which the
11 board was required to act upon the claim. If the period within
12 which the board is required to act is extended by agreement
13 pursuant to this section, the last day of the period within which the
14 board is required to act shall be the last day of the period specified
15 in the agreement.

16 SEC. 4. Section 912.7 is added to the Government Code, to
17 read:

18 912.7. The Judicial Council shall act on a claim against a
19 judicial branch entity or judge of one of those entities in
20 accordance with the procedure that the Judicial Council provides
21 by rule of court. The Judicial Council may authorize any
22 committee of the Judicial Council or employee of the
23 Administrative Office of the Courts to perform the functions of the
24 Judicial Council under this part.

25 SEC. 5. Section 912.8 of the Government Code is amended to
26 read:

27 912.8. (a) Except as provided in Section 912.7, in the case of
28 claims against the state, the board shall act on claims in accordance
29 with that procedure as the board, by rule, may prescribe. It may
30 hear evidence for and against the claims and, with the approval of
31 the Governor, report to the Legislature those facts and
32 recommendations concerning the claims as it deems proper. In
33 making recommendations, the board may state and use any official
34 or personal knowledge which any member may have regarding
35 any claim. The board may authorize any employee of the state to
36 perform the functions of the board under this part as are prescribed
37 by the board.

38 SEC. 6. Section 913 of the Government Code is amended to
39 read:



1 913. (a) Written notice of the action taken under Section
2 912.6, 912.7, or 912.8 or the inaction which is deemed rejection
3 under Section 912.4 shall be given in the manner prescribed by
4 Section 915.4. The notice may be in substantially the following
5 form:

6 “Notice is hereby given that the claim which you presented to
7 the (insert title of board or officer) on (indicate date) was (indicate
8 whether rejected, allowed, allowed in the amount of \$____ and
9 rejected as to the balance, rejected by operation of law, or other
10 appropriate language, whichever is applicable) on (indicate date
11 of action or rejection by operation of law).”

12 (b) If the claim is rejected in whole or in part, the notice
13 required by subdivision (a) shall include a warning in substantially
14 the following form:

15
16 “WARNING

17
18 “Subject to certain exceptions, you have only six (6) months
19 from the date this notice was personally delivered or deposited in
20 the mail to file a court action on this claim. See Government Code
21 Section 945.6.

22 “You may seek the advice of an attorney of your choice in
23 connection with this matter. If you desire to consult an attorney,
24 you should do so immediately.”

25
26 SEC. 7. Section 915 of the Government Code is amended to
27 read:

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

- 31 (1) Delivering it to the clerk, secretary or auditor thereof.
- 32 (2) Mailing it to the clerk, secretary, auditor, or to the governing
33 body at its principal office.

34 (b) Except as provided in subdivision (c), a claim, any
35 amendment thereto, or an application for leave to file a late claim
36 shall be presented to the state by either of the following means:

- 37 (1) Delivering it to an office of the Victim Compensation and
38 Government Claims Board.
- 39 (2) Mailing it to the Victim Compensation and Government
40 Claims Board at its principal office.



1 (c) A claim, any amendment thereto, or an application for leave
2 to file a late claim shall be presented to a judicial branch entity in
3 accordance with the following means:

4 (1) Delivering or mailing it to the court executive officer, if
5 against a superior court or a judge, *court executive officer, or trial*
6 *court employee, as defined in Section 811.9*, of that court.

7 (2) Delivering or mailing it to the clerk/administrator of the
8 court of appeals, if against a court of appeals or a judge of that
9 court.

10 (3) Delivering or mailing it to the Clerk of the Supreme Court,
11 if against the Supreme Court or a judge of that court.

12 (4) Delivering or mailing it to the Secretariat of the Judicial
13 Council, if against the Judicial Council or the Administrative
14 Office of the Courts.

15 (d) A claim, amendment or application shall be deemed to have
16 been presented in compliance with this section even though it is not
17 delivered or mailed as provided in this section if it is actually
18 received by the clerk, secretary, auditor or board of the local public
19 entity, is actually received at an office of the Victim Compensation
20 and Government Claims Board, or, if against a judicial branch
21 entity or judge, it is actually received by the court executive
22 officer, court clerk/administrator, court clerk, or ~~Secretariat~~
23 *secretariat* of the judicial branch entity, within the time prescribed
24 for presentation thereof.

25 (e) A claim, amendment or application shall be deemed to have
26 been presented in compliance with this section to a public agency
27 as defined in Section 53050 if it is delivered or mailed within the
28 time prescribed for presentation thereof in conformity with the
29 information contained in the statement in the Roster of Public
30 Agencies pertaining to that public agency which is on file at the
31 time the claim, amendment or application is delivered or mailed.
32 As used in this subdivision, “statement in the Roster of Public
33 Agencies” means the statement or amended statement in the
34 Roster of Public Agencies in the office of the Secretary of State or
35 in the office of the county clerk of any county in which ~~such~~ *the*
36 statement or amended statement is on file.

37 SEC. 8. Section 935.6 of the Government Code is amended to
38 read:

39 935.6. (a) The Victim Compensation and Government
40 Claims Board may authorize any state agency to settle and pay



1 claims filed pursuant to subdivision (c) of Section 905.2 if the
2 settlement does not exceed one thousand dollars (\$1,000) or that
3 lesser amount as the board may determine, or to reject the claim
4 and provide the notice required by Section 913. The board may
5 require state agencies that it so authorizes to report annually to the
6 board concerning the claims resolved pursuant to this section.

7 (b) As used in this section, “state agency” means any office,
8 officer, department, division, bureau, board, commission, or
9 agency of the state, claims against which are paid by warrants
10 drawn by the Controller, but does not mean any judicial branch
11 entity, as defined in Section 900.3, or any judge thereof.

12 SEC. 9. Section 935.8 is added to the Government Code, to
13 read:

14 935.8. The Judicial Council may adjust and pay any claim
15 arising out of the activities of a judicial branch entity or judge
16 thereof. The Judicial Council may adopt rules of court authorizing
17 any committee of the Judicial Council or employee of the
18 Administrative Office of the Courts to perform the functions of the
19 Judicial Council under this section.

20 SEC. 10. Section 940.2 of the Government Code is amended
21 to read:

22 940.2. “Board” means:

23 (a) In the case of a local public entity, the governing body of the
24 local public entity.

25 (b) In the case of the state, except as provided by subdivision
26 (c), the Victim Compensation and Government Claims Board.

27 (c) In the case of a judicial branch entity or a judge thereof, the
28 Judicial Council.

29 SEC. 11. Section 940.3 is added to the Government Code, to
30 read:

31 940.3. A “judicial branch entity” is a public entity and means
32 any superior court, court of appeals, the Supreme Court, the
33 Judicial Council, or the Administrative Office of the Courts.

34 SEC. 12. Section 946.6 of the Government Code is amended
35 to read:

36 946.6. (a) If an application for leave to present a claim is
37 denied or deemed to be denied pursuant to Section 911.6, a petition
38 may be made to the court for an order relieving the petitioner from
39 Section 945.4. The proper court for filing the petition is a superior
40 court that would be a proper court for the trial of an action on the



1 cause of action to which the claim relates. If the petition is filed in
2 a court which is not a proper court for the determination of the
3 matter, the court, on motion of any party, shall transfer the
4 proceeding to a proper court. If an action on the cause of action to
5 which the claim relates would be a limited civil case, a proceeding
6 pursuant to this section is a limited civil case.

7 (b) The petition shall show each of the following:

8 (1) That application was made to the board under Section 911.4
9 and was denied or deemed denied.

10 (2) The reason for failure to present the claim within the time
11 limit specified in Section 911.2.

12 (3) The information required by Section 910.

13 The petition shall be filed within six months after the application
14 to the board is denied or deemed to be denied pursuant to Section
15 911.6.

16 (c) The court shall relieve the petitioner from the requirements
17 of Section 945.4 if the court finds that the application to the board
18 under Section 911.4 was made within a reasonable time not to
19 exceed that specified in subdivision (b) of Section 911.4 and was
20 denied or deemed denied pursuant to Section 911.6 and that one
21 or more of the following is applicable:

22 (1) The failure to present the claim was through mistake,
23 inadvertence, surprise, or excusable neglect unless the public
24 entity establishes that it would be prejudiced in the defense of the
25 claim if the court relieves the petitioner from the requirements of
26 Section 945.4.

27 (2) The person who sustained the alleged injury, damage or loss
28 was a minor during all of the time specified in Section 911.2 for
29 the presentation of the claim.

30 (3) The person who sustained the alleged injury, damage or loss
31 was physically or mentally incapacitated during all of the time
32 specified in Section 911.2 for the presentation of the claim and by
33 reason of that disability failed to present a claim during that time.

34 (4) The person who sustained the alleged injury, damage or loss
35 died before the expiration of the time specified in Section 911.2 for
36 the presentation of the claim.

37 (d) A copy of the petition and a written notice of the time and
38 place of hearing shall be served before the hearing as prescribed
39 by subdivision (b) of Section 1005 of the Code of Civil Procedure
40 on (1) the clerk or secretary or board of the local public entity, if



1 the respondent is a local public entity, or (2) the Attorney General,
 2 if the respondent is the state. If the petition involves a claim arising
 3 out of alleged actions or inactions of the Department of
 4 Transportation, service of the petition and notice of the hearing
 5 shall be made on the Attorney General or the Director of
 6 Transportation. Service on the Attorney General may be
 7 accomplished at any of the Attorney General’s offices in Los
 8 Angeles, Sacramento, San Diego, or San Francisco. Service on the
 9 Director of Transportation may be accomplished only at the
 10 Department of Transportation’s headquarters office in
 11 Sacramento. If the petition involves a claim arising out of alleged
 12 actions or inactions of a judicial branch entity, service of the
 13 petition and notice of the hearing shall be made in accordance with
 14 the following:

15 (1) If the petition involves a claim arising out of alleged actions
 16 or inactions of a superior court or a judge thereof, *court executive*
 17 *officer, or trial court employee, as defined in Section 811.9, of the*
 18 *court*, service shall be made on the court executive officer.

19 (2) If the petition involves a claim arising out of alleged actions
 20 or inactions of a court of appeals or a judge thereof, service shall
 21 be made on the Clerk/Administrator of the court of appeals.

22 (3) If the petition involves a claim arising out of alleged actions
 23 or inactions of the Supreme Court or a judge thereof, service shall
 24 be made on the Clerk of the Supreme Court.

25 (4) If the petition involves a claim arising out of alleged actions
 26 or inactions of the Judicial Council or the Administrative Office
 27 of the Courts, service shall be made on the ~~Secretariat~~ *secretariat*
 28 of the Judicial Council.

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

34 (f) If the court makes an order relieving the petitioner from
 35 Section 945.4, suit on the cause of action to which the claim relates
 36 shall be filed with the court within 30 days thereafter.

37 SEC. 13. Section 948 of the Government Code is amended to
 38 read:

39 948. (a) The head of the state agency concerned, upon
 40 recommendation of the Attorney General or other attorney



1 authorized to represent the state, may settle, adjust, or compromise
2 any pending action where the Director of Finance certifies that a
3 sufficient appropriation for the payment of claims exists. Claims
4 arising out of the activities of the State Department of
5 Transportation may be paid if either the Director of Transportation
6 or the Director of Finance certifies that a sufficient appropriation
7 for the payment of the claim exists.

8 (b) If no funds or insufficient funds for the payment exist, the
9 head of the state agency concerned, upon recommendation of the
10 Attorney General or other attorney authorized to represent the
11 state, may settle, adjust or compromise any pending action with the
12 approval of the Department of Finance.

13 (c) As used in this section, “state agency” means any office,
14 officer, department, division, bureau, board, commission or
15 agency of the state claims against which are paid by warrants
16 drawn by the Controller, but does not mean any “judicial branch
17 entity” as defined in Section 940.3 or any judge thereof.

18 SEC. 14. Section 948.1 is added to the Government Code, to
19 read:

20 948.1. The Judicial Council may settle, adjust, or compromise
21 any pending action arising out of the activities of a judicial branch
22 entity or judge thereof. The Judicial Council may adopt rules of
23 court authorizing any committee of the Judicial Council or
24 employee of the Administrative Office of the Courts to perform the
25 functions of the Judicial Council under this section.

26 SEC. 15. Section 955.4 of the Government Code is amended
27 to read:

28 955.4. Except as provided in Sections 811.9, 955.6, 955.8,
29 and 955.9:

30 (a) Service of summons in all actions on claims against the state
31 shall be made on the Attorney General.

32 (b) The Attorney General shall defend all actions on claims
33 against the state.

34 SEC. 16. Section 955.9 is added to the Government Code, to
35 read:

36 955.9. In actions on claims against a judicial branch entity,
37 service of summons shall be made on:

38 (a) The court executive officer, in actions on claims against a
39 superior court or a judge thereof.



1 (b) The Clerk/Administrator of the Court of Appeal, in actions
2 on claims against a court of appeals or a judge thereof.

3 (c) The Clerk of the Supreme Court, in actions on claims
4 against the Supreme Court or a judge thereof.

5 (d) The Secretariat of the Judicial Council, in actions on claims
6 against the Judicial Council or the Administrative Office of the
7 Courts.

8 SEC. 17. Section 965 of the Government Code is amended to
9 read:

10 965. (a) Upon the allowance by the Victim Compensation
11 and Government Claims Board of all or part of a claim for which
12 the Director of Finance certifies that a sufficient appropriation for
13 the payment of the claim exists, and the execution and presentation
14 of documents the board may require which discharge the state of
15 all liability under the claim, the board shall designate the fund from
16 which the claim is to be paid and the state agency concerned shall
17 pay the claim from that fund. If there is no sufficient appropriation
18 for the payment—~~is~~ available, the board shall report to the
19 Legislature in accordance with Section 912.8. Claims arising out
20 of the activities of the State Department of Transportation may be
21 paid if either the Director of Transportation or the Director of
22 Finance certifies that a sufficient appropriation for the payment of
23 the claim exists.

24 (b) Notwithstanding subdivision (a), if there is no sufficient
25 appropriation for the payment of claims, settlements, or judgments
26 against the state arising from an action in which the state is
27 represented by the Attorney General, the Attorney General shall
28 report the claims, settlements, and judgments to the Chairperson
29 of either the Senate Committee on Appropriations or the Assembly
30 Committee on—~~the~~ Budget, who shall cause to be introduced
31 legislation appropriating funds for the payment of the claims,
32 settlements, or judgments.

33 (c) Notwithstanding subdivision (a) or (b), claims, settlements,
34 or judgments arising out of the activities of a judicial branch entity,
35 as defined by Sections 900.3 and 940.3, or a judge thereof may be
36 paid if the Judicial Council authorizes payment and the
37 Administrative Director of the Courts certifies that sufficient
38 funds for that payment exist from funds allocated to settlement,
39 adjustment, and compromise of actions and claims. If sufficient
40 funds for payment of settlements or judgments do not exist, the



1 Administrative Director of the Courts shall report the settlements
2 and judgments to the Chairperson of either the Senate Committee
3 on Appropriations or the Assembly Committee on the Budget,
4 who shall cause to be introduced legislation appropriating funds
5 for the payment of the settlements or judgments. If sufficient funds
6 for payment of claims do not exist, the Administrative Director of
7 the Courts shall report the claims to the Victim Compensation and
8 Government Claims Board, which shall have 90 days to object to
9 payment. The Administrative Director of the Courts shall confer
10 with the chairperson of the Victim Compensation and Government
11 Claims Board regarding any objection received during the 90-day
12 period. If the Victim Compensation and Government Claims
13 Board withdraws the objection, or if no objection was received, the
14 Administrative Director of the Courts shall report the claims to the
15 Chairperson of either the Senate Committee on Appropriations or
16 the Assembly Committee on the Budget, who shall cause to be
17 introduced legislation appropriating funds for the payment of the
18 claims. The Judicial Council may authorize any committee of the
19 Judicial Council or any employee of the Administrative Office of
20 the Courts to perform the functions of the Judicial Council under
21 this section. The Administrative Director of the Courts may
22 designate an executive staff member of the Administrative Office
23 of the Courts to perform the functions of the Administrative
24 Director of the Courts under this section.

25 SEC. 18. Section 965.2 of the Government Code is amended
26 to read:

27 965.2. (a) The Controller shall draw a warrant for the
28 payment of any final judgment or settlement against the state
29 whenever the Director of Finance certifies that a sufficient
30 appropriation for the payment of the judgment or settlement exists.
31 Claims upon ~~such~~ those judgments and settlements are exempt
32 from Section 925.6. Claims arising out of the activities of the State
33 Department of Transportation may be paid if either the Director of
34 Transportation or the Director of Finance certifies that a sufficient
35 appropriation for the payment of the claim exists.

36 (b) Notwithstanding subdivision (a), the Controller shall draw
37 a warrant for the payment of any final judgment or settlement
38 based on claims arising out of the activities of a judicial branch
39 entity, as defined by Sections 900.3 and 940.3, or a judge thereof,
40 whenever the Administrative Director of the Courts certifies that



1 sufficient funds for that payment exist from funds allocated to
2 settlement, adjustment, and compromise of actions and claims.
3 Claims upon those judgments and settlements are exempt from
4 Section 925.6. Claims arising out of the activities of a judicial
5 branch entity, as defined by Sections 900.3 and 940.3, or a judge
6 thereof, may be paid if the Administrative Director of the Courts
7 certifies that sufficient funds for the payment exist from funds
8 allocated to settlement, adjustment, and compromise of actions
9 and claims. The Administrative Director of the Courts may
10 designate an executive staff member of the Administrative Office
11 of the Courts to perform the certification of funds pursuant to this
12 section.

13 SEC. 19. Section 965.6 of the Government Code is amended
14 to read:

15 965.6. Notwithstanding any other provision of law, neither
16 the state nor a judicial branch entity, nor any officers or employees
17 thereof, may be required by any court in any proceeding to pay or
18 offset a tort liability claim, settlement, or judgment for which the
19 state or judicial branch entity is liable, unless one of the following
20 conditions exists:

21 (a) The Legislature has authorized the payment or offset of the
22 specific tort liability claim, settlement, or judgment.

23 (b) The Director of Finance, or the Director of Transportation
24 for claims arising out of the activities of the Department of
25 Transportation, has certified that a sufficient appropriation for the
26 payment of the claim, settlement, or judgment or to provide for
27 that offset exists. This subdivision does not apply to claims arising
28 out of the activities of a judicial branch entity or a judge thereof.

29 (c) In the case of claims arising out of the activities of a judicial
30 branch entity, as defined in Sections 900.3 and 940.3, or a judge
31 thereof, the Administrative Director of the Courts has certified that
32 sufficient funds for payment of the claim, settlement, or judgment,
33 or to provide for that offset, exist from funds allocated to
34 settlement, adjustment, and compromise of pending actions and
35 claims. The Administrative Director of the Courts may designate
36 an executive staff member of the Administrative Office of the
37 Courts to perform the certification of funds pursuant to this
38 section.

39 SEC. 20. Section 965.65 of the Government Code is amended
40 to read:



1 965.65. (a) If a request is made for certification of
2 availability of funds, approval of a settlement, or inclusion of a
3 claim in a claims bill pursuant to Section 948, 965, or 965.2 for a
4 claim in excess of thirty-five thousand dollars (\$35,000) against
5 the state which arose from the activities of any state agency or
6 employee, the agency shall report to the Director of Finance
7 concerning any action it has taken or proposes to take to prevent
8 the future occurrence of circumstances similar to those upon which
9 the claim was based, including any imposition of disciplinary
10 action.

11 (b) This section does not apply to a judicial branch entity, as
12 defined in Sections 900.3 and 940.3, or claims arising out of the
13 activities of a judicial branch entity or a judge or employee
14 thereof. *However, in the case of the categories of claims and*
15 *settlements described in subdivision (a) arising out of activities of*
16 *a judicial branch entity or a judge, court executive officer, or*
17 *employee thereof, the Administrative Director of the Courts shall*
18 *report to the Judicial Council concerning any action the*
19 *Administrative Office of the Courts has taken or proposes to take*
20 *to prevent the future occurrence of circumstances similar to those*
21 *upon which the claim was based, including any imposition of*
22 *disciplinary action.*

